

No.IS-1189

IN THE APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

E. S,

Petitioner/ Appellant,

v.

J.J. R. T.,

Respondent/Appellee.

On Appeal from the Circuit Court
Domestic Relations Division
Cook County, Illinois

No. 140/'76869 consolidated with
No.14 D 80533

Hon. Lionel Jean-Baptiste

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ORAL ARGUMENT REQUESTED

POINTS AND AUTHORITIES

A. The Trial Court Erred In Failing To Issue Ms. S An Order Of Protection As Required By The Illinois Domestic Violence Act..... 10

1. The Act *Requires* A Trial Court To Issue .An Order Of Protection-Which May Be Tailored With Up To Nineteen Discretionary Remedies-If There Is Abuse..... 10

Best v. Best,
358 Ill. App. 3d 1046 (2d Dist. 2005), *aff'd Best v. Best*, 223 Ill. 2d 342 (2006) 10

750 ILCS 60/214(a)..... 10

750 ILCS 60/103(1) 10

750 ILCS 60/103(14) 10

750 ILCS 60/103(7) 10

750 ILCS 60/205(a)..... 10

750 ILCS 60/214(a) 11

750 ILCS 60/217 11

750 ILCS 60/214(b) (1)-(4) 12

750 ILCS 60/214(b) (10)-(17) 12

750 ILCS 60/214(b) (5)-(9) 12

50 ILCS 60/220(b) 12

Cook County General Order 1.2, 21(g) 12

2. The Trial Court Here Found That Ms. S Had Been Abused But Did Not Issue The Requisite Order Of Protection 12

Best v. Best,
358 Ill. App. 3d 1046 (2d Dist. 2005), *aff'd Best v. Best*, 223 Ill. 2d 342 (2006) 14

In re Edward T.,
343 Ill. App. 3d 778 (1st Dist. 2003) 12

Citizens Org. Project v. Dep 't of Natural Res.,
189 Ill. 2d 593 (2000) 14

Preponderance of the Evidence, Black's Law Dictionary (10th ed. 2014)12

Credibility, Black's Law Dictionary (10th ed. 2014)..... 13

Witness, Black's Law Dictionary (10th ed. 2014)13

89 Ill. Adm. Code 300.20 13

750 ILCS 60/205..... 12

750 ILCS 60/214..... 14

750 ILCS 60/220 15

750 ILCS 60/214(4) 15

750 ILCS 60/214(b) (1)-(17) 15

750 ILCS 60/214(a)..... 15

750 ILCS 60/217 15

750 ILCS 60/218..... 15

750 ILCS 60/219 15

750 ILCS 60/220(c)..... 15

750 ILCS 60/215 15

750 ILCS 60/214(a)..... 15

B. The Issuance Of An Order Of Protection Is Necessary Both To Further
IDVA Policy And To Keep Ms. S Safe..... 16

1. The Illinois Legislature Adopted The Mandatory Order of
Protection Statute To Address The Problem Of Domestic Violence...16

750 ILCS 601102(3)16

750 ILCS 60/102(4).....16

750 ILCS 60/102(5).....16

750 ILCS 60/102(6)..... 16

2. Ms. S Experience Illustrates Precisely Why The Legislature
Created The Order Of Protection For Domestic
Violence Survivors 17

720 ILCS 5/12-3.4	17
750 ILCS 60/301(a).....	17
750 ILCS 60/301(b).....	17
Cook County General Order 13.8(a)(i)-(ii).....	18
Cook County General Order 13.8(a)(iii).....	18

INTRODUCTION

Over the course of a year and on at least four separate occasions, Respondent-Appellee J.J. R. T. harassed, intimidated, and physically abused Petitioner-Appellant E. S. After the last incident of physical abuse, during which Mr. R. pushed Ms. S into a chair and pressed her head against the wall while screaming cruel and degrading names at her, Ms. S, fearing for her safety and that of her children, sought an order of protection pursuant to the Illinois Domestic Violence Act ("DVA"), 750 ILCS 60/214. The trial court held two days of hearing, including testimony from Ms. S and Mr. R.. The court found Ms. S allegations of abuse "credible," made no such finding with respect to Mr. Ramirez's testimony, and found that an order was necessary to "prevent further abuse." Under the IDVA, the trial court thus was required to issue the type of order requested by Ms. S: "if the court finds that petitioner has been abused . . . an order of protection prohibiting the abuse . . . shall issue." 750 ILCS 60/214(a) (emphasis added). Rather than follow the statute's mandate, however, the trial court issued a civil restraining order "in lieu of" an order of protection.

This appeal therefore presents a simple legal issue: must a court issue an order of protection-and not a lesser civil restraining order-when it finds abuse? The answer is yes. Upon a finding of abuse, the IDVA and controlling case law clearly require a trial court to issue an order of protection. The Legislature prescribed this mandatory remedy for very important reasons, including to protect victims from repeat abuses by empowering law enforcement to immediately arrest abusers for violating orders of

protection. These are protections that civil restraining orders do not afford, and certainly not with the immediacy that domestic violence incidents must be addressed.

Indeed, since the issuance of the civil restraining order in this case, Ms. S has experienced just the type of repeat abuse that an order of protection would have prevented. Mr. R. continued to stalk and harass Ms. S, and the police were unresponsive to her because she does not have an order of protection. Illinois law requires that Ms. S receive her order of protection and that future victims of abuse be afforded this very important protection as well.

NATURE OF THE ACTION

This is an appeal from the trial court's entry of a civil restraining order "in lieu of" an order of protection required by the IDVA. After a bench trial on the Petition of Ms. S for an order of protection against Mr. R., the trial court, "to prevent further abuse," issued a civil restraining order instead of an order of protection, even though the court was required by statute to issue the order of protection.

JURISDICTIONAL STATEMENT

The jurisdiction of this Court is predicated on the trial court's denial of Ms. S's Petition. The trial court's March 26, 2015 Order gave rise to Ms. S's right to appeal under Illinois Supreme Court Rule 303. Ms. S timely filed a Notice of Appeal on April 24, 2015.

ISSUE PRESENTED FOR REVIEW

Whether the trial court erred in failing to issue an order of protection pursuant to Section 214 of the IDVA, instead issuing a civil restraining order, when the trial court found that Ms. S had been abused and needed protection from further abuse.

STANDARD OF REVIEW

The issue on appeal is whether the trial court made an error of law in failing to issue an order of protection when the IDVA requires that such an order "shall" be issued when abuse is found; therefore, the standard of review is de novo. *See Knauerhaze v. Nelson*, 361 Ill. App. 3d 538, 562-64 (1st Dist. 2005) (the question of whether a statute is mandatory or discretionary is a question of law and is reviewed de novo); *Mohica v. Cvejic*, 2013 IL App (1st), 111695, 36.

STATUTE INVOLVED

§ 214. Order of protection; remedies, (a) Issuance of order. If the court finds that petitioner has been abused by a family or household member or that petitioner is a high-risk adult who has been abused, neglected, or exploited, as defined in this Act, an order of protection prohibiting the abuse, neglect, or exploitation shall issue; provided that petitioner must also satisfy the requirements of one of the following Sections, as appropriate: Section 217 on emergency orders, Section 218 on interim orders, or Section 219 on plenary orders. Petitioner shall not be denied an order of protection because petitioner or respondent is a minor. The court, when determining whether or not to issue an order of protection, shall not require physical manifestations of abuse on the person of the victim. Modification and extension of prior orders of protection shall be in accordance with this Act. 750 ILCS 60/214(a).

STATEMENT OF FACTS

A. The Abuse

Prior to May 2014, Ms. S and Mr. R. were in a long-term relationship. (R. VI C6; V2 12). They have four children together. (Id). In May 2014,

Ms. S told Mr. R. that she wanted to end the relationship. (R. VI C6). As a result, Mr. R. repeatedly physically and verbally abused her. (Id).

At first, Mr. R. used his control over the family's finances to coerce Ms. Sanchez into being intimate with him, despite her desire to end the relationship. (R. VI C7). For example, he refused to pay for the family's vacation unless Ms. S was intimate with him. (Id).

Then, on September 1, 2014, Mr. R. began to physically abuse Ms. S. (R. VI C7). That evening, Mr. R. was drunk and angry with Ms. S for ending their relationship. (Id). While she attempted to sleep, he repeatedly pulled the sheets off her, asking why she no longer wanted to be with him. (Id.) As Mr. Ramirez's anger escalated, Ms. S stood up to leave, but Mr. R. shoved her so hard that she fell into a chair, bruising her leg. (Id.) He then pressed her head into the wall with his hand, preventing her from leaving the room. (Id.) Ms. Sanchez tried to lay down in bed to get him to stop, but he pulled her off the bed by her legs, and her body slumped to the floor. (Id.) Ms. R. was able to free herself and run from the room and call the police. (Id.) However, she feared Mr. R., who was still living in the house, so when the police arrived, she told them that Mr. R. only pushed her a little and the police left shortly thereafter. (Id.)

On October 4, 2014, Mr. R. physically abused Ms. S again after she had gone out with a friend for her birthday. (R. VI C7). While Ms. S was out, Mr. R. called her repeatedly. (Id.) Ms. S returned home to find Mr. R. drunk, demanding to know where she had been. (Id.) He then demanded to talk about their relationship. (Id.) She refused to discuss it so late at night while he was drunk and

went to bed. (Id.) At that point, Mr. R. pulled Ms. S out of bed and onto the floor. (Id.) When Ms. S stood up, Mr. R. shoved her into a corner wall, causing a large bruise on her bottom. (Id.)

Later in October 2014, Mr. R. was again berating Ms. S for ending their relationship. (R. VI C6). As he yelled at her, he hit a cabinet behind her head hard with his hand, saying he wanted to hit her. (R. VI C7). As they argued, he held her wrists so tightly that it was painful. (Id.)

On November 5, 2014, Mr. R. drunkenly began an argument with Ms. S about her decision to end their relationship. (R. VI C6). The verbal altercation escalated, and Mr. R. began to shove Ms. S, telling her that he would not leave the home unless the police made him. (Id.) He also cursed her names and pinned her head against a door with his hand while he berated her. (Id.) When Ms. S attempted to get away, this made Mr. R. more angry. (Id.) He kept pushing Ms. S until she was outside on the deck of their house. (Id.) Mr. R. then hit Ms. S hard in the chest and held her against a wall when she tried to run inside to call the police. (Id.) When Ms. S was able to free herself, she called the police. (Id.) Mr. R. left the home when he overheard Ms. S on the phone with the police. (Id.) Mr. R. did not return to the home that night or the day after, but Ms. S feared he would come back to abuse her again. (R. VI C6-?).

B. The Emergency Order Of Protection

On November 7, 2014, Ms. S filed for an Emergency Order of Protection in the Domestic Violence Courthouse of Cook County. (R. VI C2-II). The Domestic Violence Court granted the Emergency Order of Protection and set a hearing on her Petition for a plenary order of protection for November 21, 2014, at the Domestic

Violence Courthouse. (R. VI C12-14). The Emergency Order of Protection stated that Mr. R. was prohibited from physical abuse, harassment, interference with personal liberty, exploitation, and stalking, and that he should stay away from Ms. S. (R. VI C13).

C. Mr. Ramirez's Parentage Claim

On November 15, 2014, after Ms. S had filed her Petition and had received an Emergency Order of Protection, Mr. R. filed a Petition to Establish Parentage, Child Custody, Child Support, and Other Relief in the Cook County Parentage Court. (R. VI C17-22). On November 21, 2014, the Emergency Order of Protection was extended to December 12, 2014, and due to Mr. Ramirez's recently filed parentage claim, the Petition for a plenary order of protection was consolidated with the parentage case, and transferred to the Domestic Relations Division. (R. VI C23, C25).

D. The Hearing On The Petition For An Order Of Protection

Several months later, on February 10, 2015, the Domestic Relations Division held a hearing on Ms. S's Petition for a plenary order of protection. At the hearing, Ms. S introduced evidence of and testified in detail about the multiple instances during which Mr. R. abused her.

For example, Ms. S testified that in May 2014, Mr. R. "grabbed [her] from [her] wrists" and "pushed" her "hard" on her chest. (R. V2 14). She also testified that Mr. R. pushed her into a wall and introduced a picture of the bruise she sustained from that incident. (R. V2 14-15; V3 3).

Ms. S described how Mr. R. came home drunk around 10:00 P.M. on September 1, 2014, began a fight, and called her "crazy," "stupid," "dumb," and other "pretty bad words." (R. V2 18). She recalled that Mr. R. pulled her from bed "from

[her]legs," started to "push" her so that she fell over a chair, "got angry again," and "pulled [her] really hard from the bed," causing her to fall "on [her] back." (R. V2 18-19). Ms. S introduced photographic evidence of the bruises she sustained on her left leg (R. V2 20; V3 4) and her right arm (V2 22-23; V3 5-6).

Ms. S also testified that on October 5, 2014, Mr. R. was "really drunk that day" and "got really angry," calling her "bitch, dumb," and "stup(id)." (R. V2 24-25). She testified that he pushed her into a wall, causing a bruise on her bottom, and introduced into evidence a photograph of this bruise. (R. V2 26-27; V3 7).

Ms. S described the incident in which Mr. R. punched a cabinet behind her, breaking it, telling her "I really want to give this punch to you," and grabbing her "really hard." (R. V2 29). Ms. S's sister, Olga Lydia S Onofre, was in the house at the time and also testified to hearing Mr. R. call Ms. S names and a loud bang from the other room. (R. V2 75-76).

Ms. S testified that two days before she requested the Emergency Order of Protection, Mr. R. was drunk, pushed her head into the door, then outside. (R. V2 32-33) When she attempted to go back into the house, he pushed her and grabbed her hands, causing her to fall. (Id.) She introduced photo evidence of her right upper arm that was bruised (R. V2 33; V3 8), as well as of a bruise and a scratch on her hand. (R. V2 35; V3 9). Ms. S also testified that Mr. R. continued to harass her via phone and text messages after the Emergency Order of Protection was in place. (R. V2 36).

After Ms. S and her sister testified, Mr. R. moved for a directed finding "that the Petitioner has failed to establish by a preponderance of the evidence that an order of protection should be issued," which the trial court denied, noting that "I am

going to deny the motion for a directed finding, because I think that there is a prima facie case that is made, that there was some reason to be concerned by some of the examples that mom [Ms. S] had pointed out." (R. V2 80-81).

On March 26,2015, the court heard testimony from Mr. R.. He admitted to some drinking. (R. V2 89, 93). Though he denied that he had abused Ms. S, Mr. R. admitted that he did get angry when she was not home with the children because "[s]he is the mother. She has to take care of them all the time." (R. V2 96).

E. The Trial Court's Issuance Of A Civil Restraining Order "In Lieu Of An Order Of Protection"

At the conclusion of the March 26,2015 hearing, the trial court, finding Ms. S's allegations of abuse "credible" and "deem[ing] it is necessary to ... to prevent further abuse," entered a civil restraining order "in lieu of an order of protection (R. VI C48; A 1). That civil restraining order contained the following findings:

Allegations of abuse have been made against the respondent.

The Court finds the allegations credible.

The entry of a Plenary Order of Protection may not be necessary at this time.

The Court deems it *necessary* to enter this order *to prevent further abuse*.

This order is entered in lieu of an Illinois Domestic Violence Order of Protection.

(R. VI C48; A1) (emphasis added).

The trial court also ordered Ms. S and Mr. R. to talk only through "Talking Parents" and ordered the Respondent to go to alcohol counseling. (Id.) The trial court explained its reasoning for not issuing an order of protection as follows:

The issue that the Court has to consider at this particular point and time is whether or not the dad has established a pattern of abusing mom and has committed some abuses, has established a pattern of abuse, and whether such abuses, if the Court would define that, constitute cause for fear that merits a plenary order of protection, a two-year order of protection that restricts dad's interaction with mom, access to communication with mom. And at this particular point and time, I am denying the request for the two-year order of protection. (R. V2 116).

The court further explained that "dad" did not "have the latitude to be verbally abusive or physically abusive to mom. There is already an emergency order of protection in place that's been extended. It's still in place. You don't have permission to put your hand on mom." (R. V2 117). Finally, the court told the parties, "mom, you have to respect that he loves you and he still likes you. So however you guys are going to sort that out, you still have to stay away from one another. Dad, you cannot force yourself upon mom. You are not in the same household." (R. V2 121).

On April 24, 2015, Ms. S timely filed a notice of appeal. (R. VI C67-68; A2).

F. Respondent's Continued Harassment Of Ms. S

Since March 26, 2015, Mr. R. has continued to harass and stalk Ms. S. On May 24, 2015, he came to Ms. S's church, followed her to a Wal-mart, and harassed her repeatedly. (R. VI C60). After leaving the Wal-mart, Ms. S went to the police, bringing the March 26, 2015 court order. (R. VI C60-6!). The police told Ms. S that the order was not a restraining order and that they could not do anything to help her. (R. VI C61).

On June 1, 2015, Ms. S filed a petition for rule to show cause for why Mr. R. should not be held in contempt of the March 26, 2015 order. (R. VI 64-65). As

of the date of this brief, Ms. S's petition has not been heard. *See* Cook County Clerk of the Circuit Court Electronic Docket Summary for Case No. 2014D080533.

ARGUMENT

A. The Trial Court Erred In Failing To Issue Ms. S An Order Of Protection As Required By The Illinois Domestic Violence Act.

1. The Act Requires A Trial Court To Issue An Order Of Protection- Which May Be Tailored With Up To Nineteen Discretionary Remedies-If There Is Abuse.

The IDVA provides that "*an order of protection* prohibiting abuse, neglect or exploitation *shall issue*" if the court determines that the "petitioner has been abused by a family or household member." 750 ILCS 60/214(a) (emphasis added). Therefore, when a trial court finds that a petitioner has been abused, it has no discretion to deny an order of protection and substitute some lesser relief such as a civil restraining order. *See Best v. Best*, 358 Ill. App. 3d 1046, 1051 (2d Dist. 2005), *ajj'd Best v. Best*, 223 Ill. 2d 342 (2006) ("We believe that the trial court has no special discretion under the Act when it decides whether a respondent has abused a petitioner.").

The statute's definition of abuse is broad. It includes both "physical abuse" and "harassment." 750 ILCS 60/103(1). "[P]hysical abuse' includes sexual abuse" and means "knowing or reckless use of physical force, confinement or restraint," and "knowing or reckless conduct which creates immediate risk of physical harm." 750 ILCS 60/103(14). "Harassment" is "knowing conduct which is not necessary to accomplish a purpose that is reasonable under the circumstances; would cause a reasonable person emotional distress; and does cause emotional distress to the petitioner." 750 ILCS 60/103(7). The statute's definition of harassment captures emotional abuse and acts designed to exercise power and control over the victim. (Id.)

A petitioner seeking an order of protection must prove abuse by a preponderance of the evidence. 750 ILCS 60/205(a). When a trial court finds such abuse, it is obligated under the IDVA to issue an order of protection: "If the court finds that petitioner has been abused by a family or household member ...an order of protection prohibiting the abuse, neglect, or exploitation *shall issue.*" 750 ILCS 60/214(a) (emphasis added). The statute provides for three types of orders of protection: an emergency order of protection (750 ILCS 60/217), a 30-day interim order of protection (750 ILCS 60/218), and a plenary order of protection (750 ILCS 60/219).

A court has the discretion to fashion up to nineteen (19) remedies to tailor an order of protection to the specific circumstances of a case. For example, a court may include with a mandatory order of protection provisions:

- prohibiting stalking;
- awarding exclusive possession of a residence;
- for a stay away order;
- requiring counseling;
- granting exclusive possession of personal property;
- forbidding the damaging of property;
- mandating payment for losses suffered as a result of the abuse;
- requiring the surrender of firearms;
- denying access to certain records;
- requiring payment for shelter services; and
- granting injunctive relief to protect family members.

See 750 ILCS 60/214(b)(J)-(4), (10)-(17); see also *id.* (5)-(9).

The trial court also has the discretion to set the duration of a plenary order of protection for any time period up to two years. 750 ILCS 60/220(b).¹

2. The Trial Court Here Found That Ms. S Had Been Abused But Did Not Issue The Requisite Order Of Protection.

The trial court found that Ms. S had been abused. As noted above, the IDVA required Ms. S to prove her allegations of abuse by a preponderance of the evidence. 750 ILCS 60/205. That standard meant that she had to "demonstrate that the allegations are more probable than not." *In re Edward T.*, 343 Ill. App. 3d 778, 794 (1st Dist. 2003); see also *Preponderance of the Evidence*, Black's Law Dictionary (10th ed. 2014) ("The greater weight of the evidence, not necessarily established by the greater number of witnesses testifying to a fact but by evidence that has the most convincing force; superior evidentiary weight that, though not sufficient to free the mind wholly from all reasonable doubt, is still sufficient to incline a fair and impartial mind to one side of the issue rather than the other.").

Ms. S carried her burden of proof by submitting a significant amount of evidence-most of it uncontroverted by Mr. R.-in the form of photographs and extensive testimony from her and her sister regarding the multiple instances when Mr. R. physically abused and harassed her. To the contrary, after hearing all the testimony, the trial court found that Ms. S's allegations of abuse were "credible."

¹ Cook County has established a separate Domestic Violence Division to handle petitions for orders of protection. See Cook County General Order 1.2, 2l(g). At this courthouse, judges are trained to focus on orders of protection and misdemeanor domestic violence-related crimes. Debra Pogrud Stark, *What's Law Got to Do with It? Confronting Judicial Nullification of Domestic Violence Remedies*, 10 Nw. J. L. & Soc. Pol'y 130, 131, nn. 1-2 (2015).

(R. VI C48; AI). By the same token, the trial court made no findings that Mr. Ramirez's testimony was credible.

The trial court's finding that Ms. S's allegations were "credible" is significant: "credibility" is "[t]he quality that makes something (as a witness or some evidence) worthy of belief," and a "credible witness" is "[a] witness whose testimony is believable." *See Credibility*, Black's Law Dictionary (10th.ed. 2014); *Witness*, Black's Law Dictionary (10th ed. 2014); *cf* 89 Ill. Adm. Code 300.20 (the Illinois Child Abuse and Neglect Statute, which defines "credible evidence" as when "the available facts, when viewed in light of surrounding circumstances, would cause a reasonable person to believe that a child was abused or neglected"). The trial court heard two days of testimony from Ms. S and Mr. R., and found only her testimony to be credible, making no similar findings with respect to him.

In denying Mr. Ramirez's motion for a directed verdict, the trial court also noted, "I think that there is a prima facie case [of abuse] that is made, that there was some reason to be concerned by some of the examples [of abuse] that mom [Ms. S] had pointed out." (R. V2 80-81). Consistently, and importantly, the trial court's order found that it was "necessary to enter this [civil restraining] order to *prevent further abuse*." (R. VI C48; AI) (emphasis added). Obviously, it would not h&ve been necessary to prevent "further abuse" if abuse had not already occurred.

In short, Ms. S presented evidence supporting her allegations of abuse, the trial court found her allegations credible, made no favorable findings regarding Mr. Ramirez's evidence, and found a need to "prevent further abuse." Ms. S proved by a preponderance of the evidence that she had been abused.

single act-an order of protection "shall issue." 750 ILCS 60/214.² There is no leeway to do otherwise-and as detailed below, there are very good reasons that a trial court cannot so deviate.

Moreover, to the extent that the trial court believed that Mr. Ramirez's abuse warranted something less than a full two-year order of protection, the court did have the discretion to tailor an order of protection to that effect. Most notably, the trial court could have set the order for a period less than the full two years. *See* 750 ILCS 60/220. For example, the court could have issued an order of protection for only one year because all of the abuse occurred inside Ms. S's home and the parties were now living separately. The court could have required Mr. R.-whom the court found to have alcohol abuse issues-to undergo alcohol counseling as part of the order of protection. (R. V2 119); 750 ILCS 60/214(4). The court had *nineteen* remedies at its disposal. *See* 750 ILCS 60/214(b)(1)-(17). These remedies were readily available to tailor Ms. S's order of protection to address the specific circumstances of this case that were apparently significant to the trial court, such as that Ms. S and Mr. R. were no longer living together. (R. V2 121).³ The trial court's issuance of a civil restraining order "in lieu of" an order of protection therefore was not only violative of the IDVA's unequivocal directive, but also was completely unnecessary.

² As detailed above, there have been multiple instances of abuse here. *See supra* at p. 6-9.

³ Other factors cited by the trial court should have had no bearing on the decision whether to issue an order of protection. For example, that Ms. S's emergency order of protection had been extended was no reason to deny a plenary order. *See* 750 ILCS 60/214(a), 217,219, 220(c). Also, the court's comments to the effect that Mr. R. and Ms. S were both bound by the restraining order, such as "[!]hat's going to be to both of you ... [n]either can you do the same thing," (R. V2 120) violate the IDVA's proscription against mutual orders of protection. 750 ILCS 60/215. And obviously, that Mr. R., according to the trial court, "still likes" Ms. S was not a ground to deny an order of protection. (R. V2 121); 750 ILCS 60/214(a).

B. The Issuance Of An Order Of Protection Is Necessary Both To Further IDVA Policy And To Keep Ms. S Safe.

1. The Illinois Legislature Adopted The Mandatory Order of Protection Statute To Address The Problem Of Domestic Violence.

When it enacted the IDVA, the Illinois General Assembly's intentions were clear: to provide victims of domestic violence protection from future abuse, and to support law enforcement in providing assistance to and protection for those victims. The Legislature made several statutory findings, including acknowledging a historical "widespread failure to appropriately protect and assist victims," and noted that "the legal system has ineffectively dealt with family violence in the past, allowing abusers to escape effective prosecution or financial liability, and [failed to] acknowledge[] the criminal nature of domestic violence." 750 ILCS 60/102(3). The Act expressly intended to "[s]upport the efforts of victims of domestic violence to avoid further abuse by *promptly entering and diligently enforcing court orders which prohibit abuse*" and by reducing the "abuser's access to the victim." 750 ILCS 60/102(4) (emphasis added). The Act further states that one of its chief purposes is to "[c]larify the responsibilities and support the efforts of law enforcement officers to provide immediate, effective assistance and protection for victims of domestic violence." 750 ILCS 60/102(5).

The Legislature also intended to "[e]xpand the civil and criminal remedies [available to such] victims" by creating the order of protection. 750 ILCS 60/102(6). The Legislature tasked courts with issuing orders of protection and tailoring their remedies based on the circumstances in each particular case. *See supra* at 11-12 (listing remedies). Simply put, the Legislature could not have made its intentions, and the importance of the order of protection remedy in addressing domestic violence, more clear. *See also* Brief of

Amicus Curiae Domestic Violence Legal Empowerment and Appeals Project in Support of Petitioner/Appellant ("Amicus"), pp. 5-6.

2. Ms. S's Experience Illustrates Precisely Why The Legislature Created The Order Of Protection For Domestic Violence Survivors.

Ms. S's current circumstance is just the type that the Legislature was attempting to avoid when it made orders of protection available for domestic violence victims. Since the trial court issued a civil restraining order instead of an order of protection, Mr. R.--clearly undeterred by the restraining order--has continued to harass and intimidate Ms. S. *See supra* at 9. An order of protection would have included enforcement remedies to directly address this repeat abuse.

If Ms. S had the order of protection she was _supposed to have received, she would have been able obtain police protection immediately, including by the arrest of Mr. R.. The IDVA requires police to take all reasonable steps to prevent further abuse if there is "probable cause to believe that the person has committed or is committing any crime, including but not limited to *violation of an order of protection.*" 750 ILCS 60/30l(a) (emphasis added). Indeed, to effectuate prompt enforcement of orders of protection, the IDVA includes a monitoring system, LEADS, through which law enforcement can readily and immediately verify orders of protection. 720 ILCS 5/12-3.4; 750 ILCS 60/30 l(b); *see also* Amicus pp. 10-11 (discussing criminal enforcement of violations of orders of protection, as contrasted with civil penalties for violating civil restraining orders). Thus, if Ms. S had her order of protection when the police arrived, she could have shown them a copy and, once verified, they could have arrested Mr. R. for violating the order, hopefully for the last time. 750 ILCS 60/30l(b); *see*

also Amicus pp. 8-10 (discussing the effectiveness of criminal enforcement of violations of orders of protection as a deterrent for future abuse).

But Ms. S does not have that order. Instead, she has a civil restraining order, which requires a more cumbersome process to enforce. When a respondent violates a civil restraining order, an abuse victim like Ms. S must go to civil court during business hours and file a petition for rule to show cause, neither of which is practically achievable without a lawyer. *See, e.g.*, Cook County General Order 13.8(a)(i)-(ii). She must then attend a show-cause hearing (whenever it is set) and only at that point will a court decide whether the respondent is in contempt of court (a civil penalty). *See, e.g.*, Cook County General Order 13.8(a)(iii); *see also* Amicus p. 10 (discussing why civil restraining orders are not reasonable substitutes for orders of protection). Obviously, these procedures are not only more confusing and drawn out than immediate law enforcement response, but they are woefully inadequate in the face of repeat incidents of domestic violence, which occur at all hours of the day and night and do not wait for resolution when civil court is in session. Unfortunately validating these concerns, when Ms. S called the police after Mr. Ramirez's latest incident of abuse, she was told that her civil restraining order "was not a restraining order and that they couldn't do anything." (R. VI C61).

This latest incident occurred on May 24, 2015. (R. VI C60-6!). Ms. S filed her petition for rule to show cause one week later, on June 1, 2015. (R. VI C 60-66). As of the filing of this brief on July 31, 2015, almost two months later, Ms. S has not yet received a hearing, let alone a ruling, on her petition. *See*, Cook County Clerk of the Circuit Court Electronic Docket Summary for Case No. 2014D080533. This result is

plainly inadequate and directly contravenes the stated purposes and intent of the Legislature in fashioning the order of protection remedy.

CONCLUSION

The trial court failed to issue an order of protection as it was required to do under the mandatory language of Section 214 of the Illinois Domestic Violence Act.

Accordingly, the trial court made an error of law and should be reversed and directed to enter the plenary order of protection that Ms. S requested.

Respectfully submitted,

Dated: July 31, 2015

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CERTIFICATE OF COMPLIANCE

I certify that this brief in support of Appellant conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the pages containing the Rule 341(d) cover, the Rule 341(h)(1) statement of points and authorities, the Rule 341(c) certificate of compliance, the certificate of service, and those matters to be appended to the brief under Rule 342(a), is nineteen (19) pages.

Dated: July 31,2015



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CERTIFICATE OF SERVICE

I hereby certify that, on July 31, 2015, I served via Federal Express a copy of the foregoing brief in support of Petitioner/Appellant upon those listed below:

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Appendix

APPENDIX TABLE OF CONTENTS

I. Restraining Order, entered March 26, 2015.....	AI
2. Notice of Appeal, filed April24, 2014	A2
3. Record on Appeal Table of Contents	A5

RESTRAINING ORDER

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, DOMESTIC RELATIONS DIVISION

Ramirez Torres

Judge Lionel Jean-Baptiste

MM 26 2015

v.

Circuit Court No. 2056.

NO. 2014 DP 76809
Cons. w/ 2014 D 80533

;) Ct \ C h. e '1-

ORDER

Plenary Order

This cause coming to be heard on ¹⁴ Petitioner's 0 Respondent's Motion for DVOI (Inf- R), all parties being advised of the premises, ¹⁷ Petitioner ¹⁸ with counsel D pro se respondent ¹⁹ with counsel 0 pro se appearing, and this court having jurisdiction over the subject matter, 0 by agreement ^{1/1} after hearing.
THE COURT FINDS:

Allegations of abuse have been made against the respondent.

The Court finds the allegations credible.

The entry of a Plenary Order of Protection may not be necessary at this time.

The Court deems it necessary to enter this order to prevent further abuse.

This order is entered in lieu of an Illinois Domestic Violence Order of Protection.

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IT IS HEREBY ORDERED:

0 The respondent shall stay away from petitioner.

0 The respondent shall stay away from the petitioner's home or place of business.

The respondent is prohibited from physical abuse, harassment, intimidation of a dependent, interference with personal liberty, or stalking as defined by the Illinois Domestic Violence Act) the petitioner.

D The respondent shall not contact the petitioner by any means.

0 The terms of this order shall protect the people listed below.

Other: T \ e p (A \ T I (< : : C \ V \ \ R C t p p . . l j) ; r n j e - V b n \ H n 174 \ ? : o " J ' P t n f (l i !)

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Failure to comply with this order may result in a finding of contempt or the issuance of a Plenary Order of Protection.

NAME
ADDRESS
PHONE

Judge

000048

DOROTHY BROWN, CLERK OF THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

3323

#91017

APPEAL TO THE APPELLATE COURT OF ILLINOIS FOR THE FIRST DISTRICT

FROM THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS COUNTY DEPARTMENT, DOMESTIC RELATIONS DIVISION

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COOK COUNTY
CLERK OF COURT

E. S. _____)
Petitioner-Appellant,)
v.)
J.J. R. T.,)
Respondent-Appellee.)

Case No. 14 OP 78869 " §
consolidated w/ 14 D 80533 <11

NOTICE OF APPEAL

Plaintiff-Appellant, E. S, by her attorneys, LAF, hereby appeals to the Appellate Court of Illinois, First Judicial District, from the Order entered on March 26, 2015, in the Circuit Court of Cook County, County Department, Domestic Relations Division, by the Honorable Judge Lionel Jean-Baptiste, finding, after an evidentiary hearing, that Petitioner's allegations of abuse are credible and entering an order that prohibits Respondent from abusing, harassing, or stalking Petitioner, "as defined by the Illinois Domestic Violence Act," but denying Petitioner's request for an order of protection. The Circuit Court's Order is final and appealable as it disposes of all the issues in the order of protection case or, in the alternative, because it grants injunctive relief.

Ms. S prays that this Court reverse the decision of the Circuit Court denying her request for an order of protection and remand the case for entry of an order of protection, as required by the Illinois Domestic Violence Act.

Attorneys for the Petitioner-Appellant

By: [Signature]
One of Petitioner-Appellant's Attorneys

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RECORD ON APPEAL TABLE OF CONTENTS

Volume 1

I. Placita	C1
2. Domestic Violence Cover Sheet for Order of Protection Petition	C2
3. Order of Protection Summons, filed November 7, 2014	C3
4. E. S Petition for an Order of Protection, filed November 7, 2014	C4
5. Emergency Order of Protection, entered November 7, 2014.....	C12
6. Affidavit of Service of the Emergency Order of Protection, filed November 20, 2014	C15
7. Domestic Violence Cover Sheet for Petition for Custody and Visitation	C17
8. Petition of Juan R. to Establish Parentage, Child Custody, Child Support and Other Relief	C18
9. Transfer Order to Domestic Relations Division	C23
10. Notification of May 22, 2015 Status Call	C24
II. Order Extending the Emergency Order of Protection, Setting Status Hearing on the Emergency Order of Protection to December 12, 2014.....	C25
12. Affidavit of Service, filed November 26, 2014	C26
13. Notice of Limited Scope Appearance by Laura Greenspan, filed December 5, 2014	C27
14. Continuance Order Regarding Order of Protection and Status on Discovery, entered on December 12, 2014	C31
15. Petition of E. S for Custody, filed January 6, 2015	C33
16. Rule 298 Certification of Representation for Waiver of Fees, filed January 6, 2015....	C36
17. Parentage Summons, served January 6, 2015	C38
18. Notice of Filing, filed on January 6, 2015	C39
19. Appearance by Domestic Violence Legal Clinic, filed January 8, 2015	C40
20. Rule 298 Certification of Representation for Waiver of Fees, filed January 8, 2015	C41
21. Order Extending the Interim Order of Protection to March 26, 2015 and Modifying Visitation, entered February 10, 2015.....	C42
22. Notification of May 22, 2015 Status Call	C44
23. Supervised Visitation Order in <i>Simmons v. Anderson</i> Matter, Inadvertently Included in Record on Appeal	C46
24. Restraining Order, entered March 26, 2015	C48
25. Order, granting counsel Winston & Strawn leave to withdraw instant, entered March 26, 2015	C49
26. Continuance Order, continuing status to July 22, 2015	C50
27. Order, granting counsel Winston & Strawn leave to withdraw instant, entered March 26, 2015	C51
28. Continuance Order, continuing status to July 22, 2015	C52

29. Rule 298 Certification of Representation for Waiver of Fees filed April4, 2015.....	C53
30. Notice of Respondent's Motion to Modify Parenting Time and Re-Docket Petition for Child Support, filed April4, 2015	C54
31. S Motion to Modify Parenting Time and Re-Docket Petition for Child Support, filed April4, 2015	C55
32. Continuance Order, Continuing Hearing to Modify Parenting Time and Child Support, entered April22, 2015	C58
33. Status Call Order, entered May 21, 2015	C59
34. Respondent's Affidavit in Support of Petition for Rule to Show Cause	C60
35. Rule 298 Certification of Representation for Waiver of Fees, filed June I, 2015	C62
36. Notice of Petition for Rule to Show Cause, filed June I, 2015	C63
37. S Petition for Rule to Show Cause, filed June I, 2015	C64
38. Notice of Appeal, filed April24, 2015	C67
39. Request for Preparation of Record on Appeal, filed April24, 2015	C68
40. Rule 298 Certification of Representation for Waiver of Fees, filed April24, 2015	C70
41. Appellate Court Certification Page	C71

Volume2

I. Placita	!
2. Report of Proceedings on February 10,2015.....	2
3. Report of Proceedings on March 26, 2015	66
4. Notice of Filing of Report of Proceedings, filed June 25,2015.....	125
5. Letter from Circuit Court of Cook County Official Court Reporters certifying transcripts from February 10,2015 and March 26,2015	127
6. Appellate Court Certification Page	128

Volume3

I. Placita	1
2. Stipulation to Include Trial Exhibits in the Record on Appeal	2
3. Exhibit I	3
4. Exhibit 2	4
5. Exhibit 3.....	5
6. Exhibit 4.....	6
7. Exhibit 5	7
8. Exhibit 6.....	8
9. Exhibit 7.....	9
10. Appellate Court Certification Page	!0

