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ALABAMA COURT OF CIVIL APPEALS

OCTOBER TERM, 2020-2021

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J.L.L.

v.

K.S.

**Appeal from Calhoun Circuit Court
(DR-19-900713)**

DONALDSON, Judge.

On August 21, 2019, K.S. ("the mother") filed a petition in the Calhoun Circuit Court ("the trial court") seeking a protection-from-abuse ("PFA") order restraining J.L.L. from having contact with A.S. ("the child"), the mother's daughter.

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In her petition, the mother alleged that J.L.L. had washed the child in a washing machine, had threatened to hurt the child if the child told the mother about the washing-machine incident, and had pulled the child's hair when the child needed to use the restroom in a grocery store. The trial court entered an ex parte PFA order on the same day that the mother filed her petition. J.L.L. was served with the petition and the ex parte order on August 23, 2019.

On September 11, 2019, the trial court held a bench trial at which it received evidence ore tenus. Later that same day, the trial court entered a final PFA order enjoining J.L.L. from having any contact with the child. The final PFA order provided that it would expire on August 21, 2025.

J.L.L. filed a timely postjudgment motion challenging the final PFA order. In that motion, she asserted, among other things, that the mother had not introduced any evidence indicating that J.L.L. had committed an act of abuse against the child that would support the entry of a PFA order. The trial court held a hearing on November 26, 2019, and, later that same day, entered an order amending the final PFA order to provide that it would terminate on August 21, 2020, but

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otherwise denying J.L.L.'s postjudgment motion. J.L.L. then timely appealed to this court.¹

The evidence presented at the bench trial indicates that the child first came into contact with J.L.L. in approximately October 2017, when J.L.L. was living with the child's father, W.B. ("the father"). The child lived with the father, J.L.L., and the child's half sister, H.B., every other week during that period because of the custody arrangement between the mother and the father. The child was approximately four years old while J.L.L. was living in the father's household. Sometime after April 2018, J.L.L. and the father ended their relationship, and the child has since had limited contact with J.L.L.

At the trial, H.B., who was then 11 years old, testified that J.L.L. did not like the child and that J.L.L. had treated

¹Although the final PFA order, as amended, expired on August 21, 2020, J.L.L.'s appeal is not moot because she could face continuing collateral consequences because of the issuance of a PFA order against her. See M.R.E. v. M.J.E., [Ms. 2190284, Sept. 11, 2020] ___ So. 3d ___, ___ n.1 (Ala. Civ. App. 2020) (declining to dismiss as moot an appeal concerning an expired PFA order because of the lasting collateral consequences of such an order, citing Rice v. Sinkfield, 732 So. 2d 993, 994 n.1 (Ala. 1998), which noted that an exception to the mootness doctrine exists when there are "continuing collateral consequences to a party").

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H.B. better than she had treated the child. H.B. stated that, on one occasion, J.L.L., while fixing the child's hair, had pulled the child's hair and that the child had said, "Ow." H.B. also testified that J.L.L. had told the child that the child was a devil, that the child was not pretty on the inside or out, and that the father did not love the child. H.B. further testified that J.L.L. had accused the child of abusing H.B., which H.B. said was untrue. H.B. testified that, on one occasion, J.L.L. had pushed the child and that, as a result, the child had almost tripped on the concrete at the bottom of some porch steps; however, H.B. stated that the child had not fallen and had not been injured as a result of J.L.L.'s act. J.L.L. testified that she had never pushed the child, that she had never called the child names, that she had never told the child that the father did not love the child, and that she had never pulled the child's hair.

H.B. also testified that J.L.L. had made the child wash her own clothes. H.B.'s paternal grandmother, T.B., corroborated that testimony. J.L.L. testified that both H.B. and the child had been assigned chores and that washing their

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own clothes was one of those chores. J.L.L. stated, however, that she had always assisted the child in washing her clothes.

The mother testified that, on the child's first day of school, J.L.L. had posted a photograph of a doll on J.L.L.'s Facebook social-media profile page and had written beside it: "OMG yes. Perfect example. People play little Miss Angel when in reality they know they got a monster ha ha ha. Parents be like it is my little angel's first day of school." The mother introduced a photograph of that Facebook post to corroborate her testimony. The mother stated that she had inferred that J.L.L.'s Facebook post had been directed at the child because, the mother claimed, she had posted a photograph depicting the child on her first day of school on her Facebook profile page and had created an Internet link to the father's Facebook account so that he could see the photograph. No evidence was offered at trial to support the allegations in the petition that J.L.L. had washed the child in a washing machine, that J.L.L. had threatened the child, and that J.L.L. had pulled the child's hair in a grocery store.

On appeal, J.L.L. argues, among other things, that the entry of the final PFA order against her was erroneous because, she says, the mother did not prove that J.L.L. had

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committed an act of "abuse" as that term is defined by the Protection from Abuse Act ("the Act"), § 30-5-1 et seq., Ala. Code 1975. "In order to have been entitled to a PFA order, the [mother] was required to prove by a preponderance of the evidence, see Ala. Code 1975, § 30-5-6(a), that [J.L.L.] had committed an act of abuse." M.R.E. v. M.J.E., [Ms. 2190284, Sept. 11, 2020] ___ So. 3d ___, ___ (Ala. Civ. App. 2020). The Act defines the term "abuse" in § 30-5-2(a)(1), Ala. Code 1975, which provides, in pertinent part:

"(1) Abuse. An act committed against a victim, which is any of the following:

"a. Arson. Arson as defined under Sections 13A-7-40 to 13A-7-43, inclusive.

"b. Assault. Assault as defined under Sections 13A-6-20 to 13A-6-22, inclusive.

"c. Attempt. Attempt as defined under Section 13A-4-2.

"d. Child abuse. Torture or willful abuse of a child, aggravated child abuse, or chemical endangerment of a child as provided in Chapter 15, commencing with Section 26-15-1, of Title 26, known as the Alabama Child Abuse Act.

"e. Criminal Coercion. Criminal coercion as defined under Section 13A-6-25.

"f. Criminal Trespass. Criminal trespass as defined under Sections 13A-7-2 to 13A-7-4.1, inclusive.

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"g. Harassment. Harassment as defined under Section 13A-11-8.

"h. Kidnapping. Kidnapping as defined under Sections 13A-6-43 and 13A-6-44.

"i. Menacing. Menacing as defined under Section 13A-6-23.

"j. Other conduct. Any other conduct directed toward a plaintiff covered by this chapter that could be punished as a criminal act under the laws of this state.

"k. Reckless Endangerment. Reckless endangerment as defined under Section 13A-6-24.

"l. Sexual Abuse. Any sexual offenses included in Article 4, commencing with Section 13A-6-60, of Chapter 6 of Title 13A.

"m. Stalking. Stalking as defined under Sections 13A-6-90 to 13A-6-94, inclusive.

"n. Theft. Theft as defined under Sections 13A-8-1 to 13A-8-5, inclusive.

"o. Unlawful Imprisonment. Unlawful imprisonment as defined under Sections 13A-6-41 and 13A-6-42."

Thus, § 30-5-2(a)(1) defines "abuse" as an act committed against another person that constitutes one of the crimes listed in that Code section. Neither the final PFA order nor the November 26, 2019, order amending the final PFA order specifies what act of abuse as defined in § 30-5-2(a)(1) the trial court found had been established by a preponderance of

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the evidence presented at trial. The evidence presented at trial did not establish that J.L.L. committed the acts that were alleged by the mother in her petition, and we are not directed to any other act established by the evidence presented that would constitute abuse as defined in § 30-5-2(a)(1). Therefore, the evidence presented was not sufficient to support the entry of a PFA order against J.L.L., and we reverse the trial court's final PFA order, as amended, and remand the cause for further proceedings consistent with this opinion. See Shaffer v. Walters, 45 So. 3d 777, 779 (Ala. Civ. App. 2010) ("Because the evidence presented by the [petitioner] does not support a finding of any of the acts of abuse set forth in § 30-5-2, we are compelled to reverse the trial court's judgment issuing a protection-from-abuse order against the [respondent].").

REVERSED AND REMANDED.

Thompson, P.J., and Moore, Edwards, and Hanson, JJ.,
concur.