Affirmed and Memorandum Opinion filed March 30, 2017.

In The

Fourteenth Court of Appeals

NO. 14-15-00964-CV

AMANDA MICHELLE HANCOCK, Appellant

V.

LINDSEY ELAINE WORBINGTON, Appellee

On Appeal from the 280th District Court
Harris County, Texas
Trial Court Cause No. 2015-58664

M E M O R A N D U M O P I N I O N

In this appeal, Amanda Michelle Hancock challenges the legal and factual sufficiency of the evidence to support the issuance of a no-contact protective order in favor of Lindsey Elaine Worbington. Hancock additionally asserts that Worbington's application for the protective order was insufficient. Concluding that the evidence is sufficient to support the order and that Hancock waived her complaint by not raising it in the trial court, we affirm.

Background

Worbington is the wife of Hancock's ex-husband and the stepmother of Hancock's daughter. On October 9, 2013, the trial court issued a protective order to Worbington (the "first protective order"), prohibiting Hancock from, as is relevant here, engaging in conduct directed toward Worbington that is likely to "harass, annoy, alarm, abuse, torment, or embarrass" Worbington. In this agreed order, the trial court found that family violence had occurred and was likely to occur again in the future and that Hancock had committed family violence. The trial court issued this order without hearing evidence; the order states that Hancock denied committing family violence but agreed to comply with the order. The first protective order was set to expire on October 9, 2015.

A little over two weeks before this order was to expire, on September 21, 2015, Worbington returned to her real estate office after lunch. Worbington saw Hancock pulling her car into the parking lot by Worbington's office. Worbington, from her own vehicle, lowered her car window and began photographing Hancock when Hancock got out of her vehicle and approached a dental office located in the same strip mall as Worbington's real estate office. According to Worbington, Hancock saw her and shouted, "You're a stupid fucking bitch." Hancock did not approach Worbington. Hancock proceeded into the dental office, dropped off a resume, and left without further contact.

Based on this incident, about a week later on October 2, 2015, Worbington filed an application for a second protective order. In her application, dated October 2, 2015, Worbington alleged that Hancock "has engaged in conduct that constitutes family violence" and "has violated a previous protective order." In the affidavit attached to the application, Worbington verified the above-described events. Worbington additionally averred that, about two months after she received the first

protective order, Hancock called Worbington's husband—Hancock's ex-husband—and left angry messages. According to Worbington's affidavit, Hancock frequently told Worbington's husband that she hates Worbington. Additionally, Worbington described Hancock as being "obsessed" with her. Worbington did not attach a copy of the first protective order to her application.

The trial court heard Worbington's application for a protective order on October 21, by which time the first protective order had expired. At the hearing, Worbington testified about the September 21 incident. The first protective order was admitted into evidence. Worbington acknowledged that her current work address was not provided in that order, but she stated that Hancock was aware of where she worked. Worbington testified that, when she saw Hancock in the parking lot, she believed Hancock was there to harass her. Worbington explained that, after Hancock cursed at her, her "heart was racing" and she was "really freaked out." Worbington read from the report she made to police following the incident, and this report was admitted into evidence.[1] Additionally, Worbington explained that she had gotten the first protective order because Hancock was harassing her, stalking her, and leaving her "many, many, many messages" in which Hancock said she was going to come to Worbington's house and "beat the living hell" out of Worbington. Worbington stated she had been and still was scared of Hancock.

Hancock, in contrast, claimed that she did not speak to Worbington in the parking lot. Additionally, Hancock described Worbington as laughing while she took pictures of Hancock. Hancock stated that she had not known that Worbington

[1] In this report, Worbington stated that she was frightened when Hancock yelled at her in the parking lot. Worbington reported to police that she and her husband were in the process of "fighting for custody" and that she "felt very threatened" by Hancock's behavior.

worked next to the dental office where Hancock dropped off her resume, and if she had known, she would not have sought employment there.

After hearing the evidence, the trial court stated, "The evidence preponderates to support the Court finding that there has been a violation of a prior order, specifically on the issue of engaging in conduct directed towards the applicant [Worbington] intended to result -- likely to harass, annoy, alarm, abuse, torment or embarrass [Worbington]." The trial court concluded that a new protective order should issue and signed the new protective order that day (the "second protective order").

Hancock timely filed this appeal.[2]

Sufficiency of the Evidence

In her first two issues, Hancock challenges the legal and factual sufficiency of the evidence to support the trial court's issuance of the second protective order.

Standard of Review. When reviewing the legal sufficiency of the evidence, we view the evidence in the light most favorable to the judgment and indulge every reasonable inference that would support it. *City of Keller v. Wilson*, 168 S.W.3d 802, 822 (Tex. 2005). We credit favorable evidence if a reasonable fact finder could and disregard contrary evidence unless a reasonable fact finder could not. *Id.* at 807, 827; *St. Germain v. St. Germain*, No. 14-14-00341-CV, 2015 WL 4930588, at *2 (Tex. App.—Houston [14th Dist.] Aug. 18, 2015, no pet.) (mem. op.). If there is more than a scintilla of evidence to support the judgment, it must be upheld. *Coffman v. Melton*, 448 S.W.3d 68, 71 (Tex. App.—Houston [14th Dist.] 2014, pet. denied). More than a scintilla of evidence exists when the

[2] *See* Tex. Fam. Code § 81.009 (protective order may be appealed unless rendered against party in (1) a suit for dissolution of marriage or (2) a suit affecting the parent-child relationship).

evidence supporting the finding rises to a level that would enable reasonable and fair-minded people to differ in their conclusions. *Id.*

To review a factual-sufficiency challenge, we examine the entire record, considering all the evidence both in favor of and contrary to the challenged findings. *St. Germain*, 2015 WL 4930588, at *3 (citing *Cain v. Bain*, 709 S.W.2d 175, 176 (Tex. 1986)). We will overturn a finding only when it is so contrary to the overwhelming weight of the evidence so as to be clearly wrong and unjust. *Id.* (citing *Pool v. Ford Motor Co.*, 715 S.W.2d 629, 635 (Tex. 1986)); *Coffman*, 448 S.W.3d at 71. The fact finder is the sole judge of the weight and credibility of the witnesses' testimony; we may not substitute our judgment for that of the trial court simply because we might reach a different conclusion. *Coffman*, 448 S.W.3d at 71. With these standards in mind, we turn to the law applicable to this case.

Governing Law. Although Worbington filed her application for the second protective order before the first protective order had expired, by the time the hearing was held on her application, the first protective order had expired. Thus, Texas Family Code section 85.002 applies to this case. This provision states:

> If the court finds that a respondent violated a protective order by committing an act prohibited by the order as provided by Section 85.022, that the order was in effect at the time of the violation, and that the order has expired after the date that the violation occurred, the court, without the necessity of making the findings described by Section 85.001(a), shall render a protective order as provided by Section 85.022 applying only to the respondent and may render a protective order as provided by Section 85.021.

Tex. Fam. Code § 85.002.

The parties do not dispute that the first protective order was obtained pursuant to Family Code section 85.022. And, as is applicable here, this section provides that the court may prohibit a person found to have committed family

violence from "engaging in conduct directed specifically toward a person protected by an order . . . that is reasonably likely to harass, annoy, alarm, abuse, torment, or embarrass the person." *Id.* § 85.022. If the court finds that a respondent violated a protective order by committing an act prohibited by the order, and that the protective order was in effect at the time of the violation but has since expired, the court shall render a new protective order with respect to the respondent. *Id.* § 85.002. Armed with the appropriate legal framework, we next examine Hancock's insufficiency complaints.

Legal Sufficiency. First, Hancock asserts that the evidence is legally insufficient to support the issuance of the protective order. Hancock urges that, viewing the evidence in the light most favorable to the trial court's order, there was no "reasonable basis for differing conclusions by reasonable minds about whether Hancock engaged in conduct likely to harass, annoy, alarm, abuse, torment, or embarrass Worbington." We disagree.

Worbington testified that Hancock's behavior of showing up at Worbington's place of business and shouting profanities at Worbington caused Worbington to "freak out" and made Worbington's heart race. Additionally, Worbington stated that she obtained the first protective order because Hancock was harassing and stalking her, as well as leaving numerous messages that she was going to come to Worbington's home and "beat the living hell" out of Worbington. According to Worbington, she was still afraid of Hancock. Finally, the first protective order was admitted into evidence at the hearing; in it, Hancock agreed that the order was issued for the "safety and welfare" of Worbington and that it was "necessary for the prevention of family violence."

Viewing this evidence in the light most favorable to the trial court's findings, as we must, the trial court reasonably could have concluded that Hancock

shouted profanity specifically to, at a minimum, alarm Worbington. *See Coffman*, 448 S.W.3d at 74 (concluding that legally sufficient evidence supported issuance of second protective order based in part on evidence of past acts of family violence and violations of first agreed protective order). Because more than a scintilla of evidence supports the trial court's finding that Hancock violated the first protective order, the evidence is legally sufficient to support the issuance of the second order. *See* Tex. Fam. Code § 85.002; *see also Coffman*, 448 S.W.3d at 74.

We pause to note that, in both her sufficiency challenges, Hancock urges that she could not have intended to engage in any behavior directed at Worbington because the evidence is "undisputed" that she did not know where Worbington worked. However, Worbington testified that Hancock was "well aware" of Worbington's place of employment, although Worbington acknowledged that the first protective order did not state her current work address. *Cf*. Tex. Fam. Code § 85.022(c).[3] The trial court, as the finder of fact, was entitled to credit Worbington's testimony that Hancock knew where Worbington worked. *See Coffman*, 448 S.W.3d at 71; *St. Germain*, 2015 WL 4930588, at *4. In any event, the trial court reasonably could have found that the conduct violating the first protective order was Hancock's yelling at Worbington, as opposed to Hancock's physical presence at Worbington's place of employment.

We overrule Hancock's first issue.

Factual Sufficiency. Next, Hancock contends that the evidence supporting Worbington's claim is "so weak as to be clearly wrong and manifestly unjust"—

[3] Family Code section 85.022(c) requires that any protective order prohibiting a respondent from going to or near a person's place of employment specifically describe each location to be avoided, including minimum distances the respondent must maintain. On appeal, Hancock does not challenge the second protective order on the grounds that the first protective order failed to comply with section 85.022(c) in this regard.

i.e., that the evidence is factually insufficient to support the order. Specifically, Hancock urges that, when the entire record is considered, there is no evidence that Hancock approached Worbington and that "the real reason for the dispute" is that Worbington and her husband were engaged in a custody battle with Hancock regarding Worbington's stepdaughter.

First, the only evidence that Worbington "approached" Hancock came from Hancock.[4] And, although Worbington acknowledged that she and her husband were involved in a "custody proceeding" with Hancock, Worbington explicitly stated that her application for a second protective order had nothing to do with that proceeding. To be sure, the trial court reasonably could have believed that Worbington provoked the exchange based on Hancock's description of events and Worbington's conduct. However, the trial court accepted Worbington's version of events, and it was the sole judge of the witnesses' credibility. *See Coffman*, 448 S.W.3d at 71. The trial court, as fact finder, was entitled to credit Worbington's testimony over Hancock's and we are not at liberty to disturb its findings when they are reasonable. *See, e.g.*, *St. Germain*, 2015 WL 4930588, at *4 (trial court entitled to credit applicant's testimony over testimony of other witness).

In short, based on all the evidence before the trial court, the finding is not so contrary to the overwhelming weight of the evidence so as to be clearly wrong and unjust. *See St. Germain*, 2015 WL 4930588, at *4; *Coffman*, 448 S.W.3d at 75. Thus, the evidence is factually sufficient to support the trial court's issuance of the second protective order.

We overrule Hancock's second issue.

[4] Hancock did not directly testify that Worbington "approached" her; instead, she testified that she saw Worbington's car coming through the parking lot. Hancock stated that Worbington "stopped, laughed, pulled up her phone[,] and starting taking pictures" of Hancock.

The Application

In Hancock's final issue, she complains that Worbington's application failed to comply with the statutory requisites of the Texas Family Code. Worbington filed her application for the second protective order less than a month before the first protective order expired. Under these circumstances, Texas Family Code section 82.0085 sets forth the requirements of Worbington's application. This provision states that Worbington's application "must include . . . a copy of the previously rendered protective order attached to the application" and "a description of the threatened harm that reasonably places the applicant in fear of imminent physical harm, bodily injury, assault[,] or sexual assault." Tex. Fam. Code § 82.0085(a). It is undisputed that Worbington did not attach a copy of the first protective order to her application.

However, it is likewise undisputed that Hancock did not voice any complaints about the sufficiency of Worbington's protective-order application in the trial court. Generally, to preserve a complaint for appellate review, the complaining party must have presented the complaint to the trial court by timely request, objection, or motion. *See* Tex. R. App. P. 33.1(a)(1). Hancock failed to present this complaint to the trial court and cannot assert it for the first time on appeal. *In re B.L.D.*, 113 S.W.3d 340, 350 (Tex. 2003) (quoting *Pirtle v. Gregory*, 629 S.W.2d 919, 920 (Tex. 1982) (per curiam)); *Watts v. Oliver*, 396 S.W.3d 124, 133 (Tex. App.—Houston [14th Dist.] 2013, no pet.) ("A complaint that the trial court misapplied the law must be raised in the trial court.").

Because Hancock did not raise this complaint in the trial court, she has not preserved it for our review. *See* Tex. R. App. P. 33.1(a)(1); *In re B.L.D.*, 113 S.W.3d at 350.

Hancock's third and final issue is overruled.

Conclusion

Having overruled Hancock's three issues, we affirm the trial court's judgment.

/s/ Kevin Jewell
Justice

Panel consists of Chief Justice Frost and Justices Brown and Jewell.