

NOT FOR OFFICIAL PUBLICATION
IN THE COURT OF CIVIL APPEALS OF THE STATE OF OKLAHOMA
DIVISION III

ERIN RUBIN,) FILED
Petitioner/Appellee,) COURT OF CIVIL APPEALS
vs.) STATE OF OKLAHOMA
MICHAEL RAMON OCHOA) APR 9 2020
Defendant/Appellant.) JOHN D. HADDEN
) CLERK
) Case No. 117,153

APPEAL FROM THE DISTRICT COURT OF
OKLAHOMA COUNTY, OKLAHOMA

HONORABLE LARRY SHAW, TRIAL JUDGE

AFFIRMED

Erin Rubin,
Oklahoma City, Oklahoma,

Pro Se Petitioner/Appellee,

Michael Ramon Ochoa,
San Francisco, California,

Pro Se Defendant/Appellant.

Opinion by Barbara G. Swinton, Vice-Chief Judge:

¶1 Defendant/Appellant Michael Ramon Ochoa (Defendant) appeals from an order granting a protective order against him in favor of Petitioner/Appellee Dr. Erin Rubin (Petitioner). Defendant argues that service was not properly obtained; that he was not provided proper notice of the hearing; and that there was insufficient evidence to sustain Petitioner's request for a protective order. In response, Petitioner argues that Defendant was properly served with the petition and a notice of the hearing; and that the district court did not abuse its discretion in granting the protective order. We agree with the Petitioner, and affirm the trial court's order.

BACKGROUND

¶2 On May 2, 2018, Petitioner filed a petition for protective order against Defendant, her ex-spouse, asserting harassment. In the petition, she asserted that she and Defendant divorced in 2005, and that he has repeatedly contacted her employers, the Federal Bureau of Investigation, and the National Institutes of Health, among other federal, state and city entities. Petitioner requested that a final order be entered against Defendant, prohibiting him from attempting to have any contact with her. Following the filing of the petition, the trial court authorized an alias victim's protective order (VPO) to be issued, because no service was accomplished, authorizing service by a licensed process server. Defendant was served with the petition and notice of hearing at his California residence.

¶3 A hearing was held on May 29, 2018. Petitioner appeared at the hearing;

Defendant did not. The court granted a five-year VPO based on harassment, prohibiting Defendant from “attempting or having ANY CONTACT whatsoever with the Petitioner,” and further prohibiting Defendant from harassing or otherwise interfering with Petitioner. Defendant appeals from this order.

STANDARD OF REVIEW

¶4 Proceedings under the protection from Abuse Act, 22 O.S. §§ 60, *et seq.*, are reviewed for an abuse of discretion. *Curry v. Streater*, 2009 OK 5, ¶8, 213 P.3d 550. Under an abuse of discretion standard, we will examine the evidence in the record, and reverse “only if the trial court’s decision is clearly against the evidence or is contrary to a governing principle of law.” *Id.* “To reverse under an abuse of discretion standard, an appellate court must find the trial court’s conclusions and judgement were clearly erroneous, against reason and evidence.” *Id.*; *Oklahoma Tpk. Auth. v. Little*, 1993 OK 116, ¶6, 860 P.2d 226.

ANALYSIS

¶5 We first note that Defendant’s brief includes arguments on an application to assume original jurisdiction. This was not done in a separate proceeding, and the Supreme Court, by order dated June 28, 2018, directed that the appeal be treated as one from a final order pursuant to Oklahoma Supreme Court Rule 1.20 and 12 O.S. § 953. Accordingly, we do not address Defendant’s arguments concerning this issue.

¶6 Although not set forth in a separate proposition as required by Supreme Court Rule 1.11 (f), or with supporting authority as required by Rule 1.11 (k), Defendant

appears to suggest error in the trial court's treatment of his motion to vacate. However, the record indicates that the motion was not ruled upon by the trial court, so we will not address it on appeal. "This Court does not make first-instance determinations of disputed issues of either law or fact in the exercise of its appellate jurisdiction." *In re: Guardianship of Stanfield*, 2012, OK 8, ¶27, 276 P.3d 989, 1001.

¶7 Defendant argues that there was improper service of both Petitioner's petition for a VPO and the notice of hearing. Defendant suggests that he has provided sufficient evidence to overcome the presumption of proper service, as set forth in *SMS Financial L.L.C. v. Ragland*, 1995 OK CIC APP 1 60, 918 P.2d 400. Petitioner cites the same case for the proposition that "[t]he signature of a process server on a return of service constitutes a *prima facie*, but rebuttable, presumption of proper service." *Id.* at ¶19. The alleged evidence presented by Defendant is that service was initially not obtained when a San Francisco sheriff left a note in Defendant's mailbox on May 8, 2018, but failed to serve him with the summons and petition. However, the record further indicates that service was effected on May 22, 2018, as shown by the affidavit of service filed in Oklahoma County. Finally, we note that the evidence upon which Defendant attempts to rely was made a part of his motion to vacate, which was not ruled on and not before this court on appeal. The trial court's order is not reversible on the issue of service.

¶8 Defendant also argues that the trial court's order was not supported by sufficient evidence. Defendant does not provide any supporting authority for this proposition, as required by Okla. Sup. Ct. R. 1.11 (k). However, we will not decide this issue on a technicality. Pursuant to 22 O.S. § 60.2, a trial court may enter a

protective order upon petition by a victim of harassment. "Harassment" is defined as a "knowing and willful course or pattern of conduct by a family or household member or an individual who is or has been involved in a dating relationship with the person, directed at a specific person which seriously alarms or annoys the person, and which serves no legitimate purpose." *Id.* at §60.1 (5). In her petition, Petitioner asserted that Defendant, her ex-spouse, has mailed hundreds of Petitioner's co-workers, as well as many state and federal agencies and entities concerning her fitness as a medical professional. She also asserted that through Defendant's social media accounts, he has posted content about her and her colleagues, as well as pictures and references to her children. Petitioner further described that upon moving to Oklahoma to work for the University of Oklahoma Health Sciences Center as a professor of pathology, Defendant contacted the dean and Petitioner's new colleagues. Following a hearing, the trial court found that a final VPO was necessary to protect the Petitioner from harassment. No transcript was made of the hearing. The Oklahoma Supreme Court has consistently held that error will not be presumed from a silent record. *Hamid v. Sew Original*, 1982 OK 46, ¶6, 645 P.2d 496. Rather, "[t]he opposite is true. Absent a record showing otherwise, this court presumes that the trial court did not err." *Id.* Defendant has failed to present anything to suggest the trial court abused its discretion in issuing the final protective order. Based on the record before us, we must presume that the trial court did not err, and the order is affirmed.

¶9 AFFIRMED.

MITCHELL, P.J., and BELL, J., (sitting by designation) concur.

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

MONDAY, SEPTEMBER 21, 2020

THE CLERK IS DIRECTED TO ENTER THE FOLLOWING ORDERS OF THE COURT:

116,228 Arcadiana Maintenance Service v. Kris Agrawal and Amy Agrawal; and Amy Agrawal and Energy Production Services, LLC

Petition for certiorari is denied.

CONCUR: Gurich, C.J., Winchester, Edmondson, Colbert, Combs, Kane and Rowe, JJ.

NOT PARTICIPATING: Kauger, J.

NOT VOTING: Darby, V.C.J.

117,027 Susan Harriman and Frank Holdsclaw, as next of kin of Mary Holdsclaw, deceased v. Rajesh Narula, M.D. and Quality Health Care, LLC d/b/a Care Living Center

Petition for certiorari is denied.

CONCUR: Kauger, Winchester, Edmondson, Colbert, Combs, Kane and Rowe, JJ.

NOT VOTING: Darby, V.C.J.

RECUSED: Gurich, C.J.

117,153 Erin Rubin v. Michael Ramon Ochoa

Petition for certiorari is denied.

CONCUR: Gurich, C.J., Kauger, Winchester, Edmondson, Colbert, Combs, Kane and Rowe, JJ.

NOT VOTING: Darby, V.C.J.

[Noma D. Gurich]

FILED
SUPREME COURT
STATE OF OKLAHOMA
SEP 21 2020
JOHN D. HADDEN
CLERK

CHIEF JUSTICE