MEMORANDUM DECISION

ATTORNEY FOR APPELLANT

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IN THE COURT OF APPEALS OF INDIANA

N.W.,
Appellant-Respondent,

v.

D.G.,
Appellee-Petitioner.

April 30, 2021

Court of Appeals Case No. 20A-PO-2100

Appeal from the Clark Circuit Court

The Honorable Daniel Donahue, Senior Judge

The Honorable William A. Dawkins, Magistrate

Trial Court Cause No. 10C02-2006-PO-219

Mathias, Judge.

[1] N.W. appeals the Clark Circuit Court's entry of a protective order sought by D.G. N.W. raises two issues, one of which we find dispositive and restate as the

following: whether the protective-order hearing was inadequate under Indiana's Civil Protection Order Act.

[2] We reverse and remand.

Facts and Procedural History

[3] On June 12, 2020, D.G. petitioned for a protective order against N.W., her former boyfriend of several years.[1] That same day, the court set a July 6 hearing date on the petition. At the beginning of the hearing, at which both D.G. and N.W. appeared pro se, the trial court asked D.G., "Would you tell me what this is all about, please?" Tr. p. 4. D.G. informed the court that, since she moved out of their shared home "about two [] months ago," N.W. "will not leave me alone, basically. Numerous text messages on my phone, I have proof of, calling me, following me wherever I'm at." *Id.* D.G. presented no additional evidence. Instead, the trial court inquired how long the parties knew each other, where each of them currently lived, and the status of their shared residence. *Id.* at 4–6.

[4] Following this brief exchange, the court asked N.W., "Do you have any intentions of troubling this woman." *Id.* at 6. He responded, "No" multiple times, and the trial court stated, "Alright. That's fine. That's all I wanted to know." *Id.* The court then declared, "We will issue the Protective Order" and told D.G. and N.W. to "[j]ust wait outside." *Id.*

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[1] D.G.'s petition is not in the record on appeal.

[5] At that point, N.W. asked if he could object, and the court responded, "Sure." *Id.* at 7. N.W. proceeded to detail threats he received from D.G., and explained that the "idea[] of me following her" was related to them both driving down the same country roads. *Id*. N.W. remarked, "the only way that I ever come around her was a county road" and expressed his belief that he should not "be penalized for that." *Id.* The trial court told N.W., "there's no penalty involved here. We're not penalizing you. We're simply saying to you stay away from her." *Id.* at 8. At some point during this exchange, D.G. left the courtroom. N.W. then confirmed to the court that he had no desire to be around D.G. and asked, "Well, can you explain to me how an order goes? That's all I need to know." *Id.* The trial court replied, "It just says stay away from her," to which N.W. responded, "Oh that ain't no problem." *Id.* Later that day, the trial court entered a two-year order of protection.

[6] N.W. now appeals.

Discussion and Decision

[7] We begin by noting that D.G. has not filed an appellee's brief. In these circumstances, we will not develop an argument on the appellee's behalf. *See, e.g., L.O. v. D.O.*, 124 N.E.3d 1237, 140 (Ind. Ct. App. 2019). We may reverse the trial court's judgment if the appellant establishes prima facie error, which is error at first sight, on first appearance, or on the face of it. *Id.*

[8] N.W. contends that he was deprived of due process at the protective-order hearing in two ways: (1) the court decided to issue the order before providing

N.W. the opportunity to cross examine D.G. or present evidence on his behalf; and (2) the court failed to make reasonable efforts to ensure that he understood the protective order, as required by the Indiana Civil Protection Order Act ("CPOA"). Though N.W. characterizes his claims as due process violations, we find the more appropriate inquiry is whether the court's actions deprived N.W. of a "hearing" as contemplated by the CPOA. *See Essany v. Bower*, 790 N.E.2d 148, 151 (Ind. Ct. App. 2003). Based on these unique facts and circumstances, we answer that question in the affirmative and remand for a new hearing.[2]

[9] The CPOA was enacted, in part, to promote the protection and safety of victims of harassment and to prevent future harassment. Ind. Code § 34-26-5-1(2)–(3).[3] Thus, "[a] person who is or has been subjected to harassment may file a petition for an order for protection against a person who has committed repeated acts of harassment against the petitioner." I.C. § 34-26-5-2(b). Generally, a trial court has discretion to grant protective relief according to the terms of the CPOA. *See* I.C. § 34-26-5-9. But a trial court errs if it issues a protective order without complying with those terms. *See N.E. v. L.W.*, 130 N.E.3d 102, 106 (Ind. Ct. App. 2019) (citing *Essany*, 790 N.E.2d at 153); *see also*

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[2] We therefore decline to address N.W.'s argument that the evidence is insufficient to support the court's issuance of the protective order. We briefly note, however, that D.G. presented her entire case in two sentences at the hearing. Tr. p. 4. And in those sentences, D.G. made no reference to threating behavior or conduct by N.W. Yet, for a protective order to be valid, evidence-based findings must support a conclusion that "a respondent represents a credible threat to the safety of a petitioner or a member of a petitioner's household." Ind. Code § 34-26-5-9(g).

[3] The CPOA also has the express purpose of promoting the protection and safety of victims of domestic or family violence and preventing such violence. While D.G.'s petition was not included in the record on appeal, we find nothing to suggest that D.G.'s allegations are premised on violence. *See* Appellant's Br. at 5.

S.H. v. D.W., 139 N.E.3d, 214, 219 (Ind. 2020) (observing that "a court faced with a request for protective order must balance, on the one hand, the need to protect actual and threatened victims against, on the other, the onerous burden borne by those erroneously subject to such an order").

[10] Under the CPOA, a court may issue an order for protection that is premised on alleged harassment "upon notice and after a hearing, whether or not a respondent appears." I.C. § 34-26-5-9(b). Our court has previously held that the "minimum requirements" for such a hearing include the opportunity to testify and cross-examine witnesses. *N.E.*, 130 N.E.3d at 106 (citing *Essany*, 790 N.E.2d at 152). These minimum requirements were not satisfied here.

[11] After the court administered oaths to N.W. and D.G., the following transpired:

> Court: [D.G.] you're the Petitioner. Would you tell me what this is all about, please?
>
> D.G.: I have moved out from the residence that we shared about two (2) months ago.
>
> Court: Um hm.
>
> D.G.: And [N.W.] will not leave me alone, basically. Numerous text messages on my phone, I have proof of, calling me, following me wherever I'm at.

Tr. p. 4.

After a brief discussion unrelated to D.G.'s allegation, the following exchange occurred:

> Court: Do you have any intentions of troubling this woman?
>
> N.W.: No.
>
> Court: Alright
>
> N.W.: No. No.
>
> Court: Alright. That's fine. That's all I wanted to know.
>
> N.W.: No.
>
> Court: We will issue the Protective Order. We'll have it prepared and ready for you. Just wait outside. We'll bring it out to you as soon [as] it's run off, okay.

Id. at 6.

[12] As this discussion illustrates, N.W.—the respondent who was present in the courtroom—was not given the opportunity to cross-examine D.G. or to testify on his own behalf before the court decided to issue the protective order. As a result, the hearing did not comport with the minimum requirements under the CPOA. Yet, the hearing was also inadequate for a second reason.

[13] The CPOA requires the court to "make reasonable efforts to ensure that the order for protection is understood by . . . a respondent if present." I.C. § 34-26-

5-9(e)(2). Ensuring that a respondent who is present at a hearing understands a protective order is vital, as court-ordered measures accompanying the order can "impose significant restrictions on a respondent's freedom of movement and other rights." *S.H.*, 139 N.E.3d at 219 (quoting *A.N. v. K.G.*, 10 N.E.3d 1270, 1272 (Ind. Ct. App. 2014)). The court here did not make reasonable efforts to ensure that N.W. understood the protective order.

[14] After deciding to issue the protective order and permitting D.G. to leave the courtroom, N.W. asked the trial court, "Well, can you explain to me how an order goes? That's all I need to know." Tr. p. 8. The court replied, "It just says stay away from her." *Id.* That seven-word response, however, does not inform N.W. of several court-ordered measures included in the order, such as: the two-year duration; criminal penalties associated with violating the order; that N.W. cannot directly or indirectly communicate with D.G.; and that N.W. is prohibited from purchasing, receiving, or possessing a firearm while subject to the order. Appealed Order at 2, 4.

Conclusion

[15] We conclude that N.W. has demonstrated prima facie error and the protective-order hearing was inadequate under the CPOA. We thus reverse and remand to the trial court for a new hearing.

Riley, J., and Crone, J., concur.