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IN THE
COURT OF APPEALS OF INDIANA

J.L.,
Appellant-Respondent,

v.

M.M.,
Appellee-Petitioner.

September 6, 2022

Court of Appeals Case No.
22A-PO-512

Appeal from the Allen Superior
Court

The Honorable Andrea R. Trevino,
Judge

The Honorable Carolyn S. Foley,
Magistrate

Trial Court Cause No.
02D07-2108-PO-2152

Tavitas, Judge.

Case Summary

- [1] J.L. (“Father”) appeals the trial court’s grant of an order for protection filed by M.M. (“Mother”) for the protection of Z.B.M.L. (“Child”). Father argues that Mother failed to demonstrate by a preponderance of the evidence that domestic

or family violence occurred and that Father was, at a minimum, entitled to supervised parenting time. We conclude that the trial court did not err by granting the order for protection. The trial court, however, erred by prohibiting Father from having any contact with Child and denying Father parenting time for two years under the protection order. Accordingly, we affirm in part, reverse in part, and remand for the trial court to allow some supervised contact and/or therapeutic parenting time between Father and Child until this matter is addressed in the paternity action.

Issues

- [2] Father raises two issues, which we restate as:
- I. Whether the trial court properly granted the order for protection.
 - II. Whether the trial court erred by eliminating Father's parenting time rather than ordering supervised parenting time.

Facts

- [3] Father and Mother are the parents of Child, who was fourteen years old at the relevant times. On August 6, 2021, Mother filed a petition for an order for protection on behalf of Child against Father. Mother alleged that Father threatened, attempted, and caused physical harm to Child, that Father placed Child in fear of physical harm, and that Father "committed repeated acts of harassment against the child." Appellant's App. Vol. II p. 10. The petition

described an incident in which Father pinned Child down and squeezed Child's face. Child alleged that "[t]his kind of thing happens frequently" when Child is with Father. *Id.* The petition requested that Father be denied all contact and parenting time with Child.

[4] The initial trial court granted an *ex parte* order for protection on behalf of Child and against Father, and the matter was transferred to the trial court that was addressing the parties' paternity cause of action. In the paternity action, Father filed a motion for rule to show cause and a motion to modify custody, parenting time, child support, and Child's education on August 18, 2021. The trial court held a hearing on the petition for an order for protection on August 30, 2021.

[5] At the beginning of the protection order hearing, Mother sought to have Child participate in an *in camera* interview. Father objected to Child testifying or participating in an *in camera* interview, and the trial court overruled Father's objection. The trial court allowed the parties to submit specific questions to be asked of Child.

[6] After the *in camera* interview, Mother testified that Child showed Mother a "bad scar on the inside" of his lip. Tr. Vol. p. 21. Mother testified that Child "asked and begged" her to take measures regarding his relationship with Father. *Id.* at 23.

[7] Father testified that he and Child argued about the Child playing video games when he was supposed to be mowing the lawn. Child went upstairs and

slammed his door. Father followed Child, and Child “tried to push past” Father. *Id.* at 33. Father held onto Child, put his hand over Child’s mouth, and said, “you’re not going to talk to me that way.” *Id.* Father held Child, and Child was “kicking and fighting back.” *Id.* Father eventually let Child go. Later that day, Father and Child apologized to each other, and Child mowed the lawn. Father testified that these incidents happen “once every couple of weeks . . . where [Child] gets that angry and [Father] restrain[s] him . . .” *Id.* at 34.

[8] After Mother and Father presented evidence, the trial court summarized Child’s *in camera* interview as follows. Child indicated that “things started getting . . . bad when he was approximately thirteen”; Child and Father argue “fairly frequently”; Child “does not feel safe when the arguments occur”; Child reported that Father has put his hands on Child, including Father holding his hand over Child’s mouth, squeezing Child’s cheeks, pushing Child down, holding Child on the bed, holding Child’s arms tightly, and pushing Child into a wall. *Id.* at 48-49. Child has sustained a cut on his lower lip from his braces and “hit his head on the window sill [sic].” *Id.* When asked if he feels safe with Father, Child responded that things “instantly change[],” that “it is a repetitive situation,” and that he “feels like he is walking on [] explosive eggshells.” *Id.* at 50. Child believes that Father is “physically controlling”, and Child is “not comfortable” in Father’s house. *Id.* at 50. Child has threatened to contact child protective services, but Father told Child “that they wouldn’t do anything”

Id. at 51. Child wants the order for protection, and “[h]e doesn’t want contact with his dad until he is an adult and he can defend himself.” *Id.* at 51.

[9] The trial court found that Father “represents a credible threat to the safety of [Child].” Appellant’s App. Vol. II p. 15. The trial court also found that Mother “has shown, by a preponderance of the evidence, that domestic or family violence . . . has occurred sufficient to justify the issuance of this Order.” *Id.* The trial court entered findings granting the order for protection against Father to protect Child for two years, which prohibits Father from “harassing, annoying, telephoning, contacting, or directly or indirectly communicating” with Child and orders Father “to stay away from the residence and/or school” of Child. *Id.* at 16.

[10] Father filed a motion to correct error. Father argued, in part, that the trial court improperly allowed the *in camera* interview; he should have been allowed supervised contact with Child; and there was insufficient evidence to eliminate Father’s contact with Child for two years. After a hearing, the trial court entered the following order:

a. Family violence by [Father] against [Child] has been ongoing for the past 12-24 months and escalating. The most recent incident resulted in physical injury to [Child].

b. At the time of the protective order hearing, therapeutic counseling for [Child] was scheduled but had not yet occurred.

c. If appropriate and after counseling, the Order for Protection can be modified as circumstances evolve in the parent-child relationship between [Father] and [Child].

d. Finally, a full airing of all issues, including custody, education, parenting time, and support are pending in the paternity cause with the assistance of legal counsel for both parents.

Id. at 26. Father now appeals.

Discussion and Decision

[11] Father challenges the trial court’s grant of an order for protection and the trial court’s denial of his motion to correct error. The trial court here entered, sua sponte, findings of fact and conclusions thereon in its orders. “Where a trial court enters findings sua sponte, the appellate court reviews issues covered by the findings with a two-tiered standard of review that asks whether the evidence supports the findings, and whether the findings support the judgment.” *Steele-Giri v. Steele*, 51 N.E.3d 119, 123 (Ind. 2016). “A finding is clearly erroneous when there are no facts or inferences drawn therefrom which support it.” *Perkinson v. Perkinson*, 989 N.E.2d 758, 761 (Ind. 2013). We neither reweigh the evidence nor judge the credibility of the witnesses. *Id.* We consider only the evidence and reasonable inferences drawn therefrom that support the findings. *Id.* We review the trial court’s legal conclusions de novo. *Id.*

I. Order for Protection

[12] The purpose of the Indiana Civil Protection Order Act (“ICPOA”) is to promote the: “(1) protection and safety of all victims of domestic or family

violence in a fair, prompt, and effective manner; (2) protection and safety of all victims of harassment in a fair, prompt, and effective manner; and (3) prevention of future domestic violence, family violence, and harassment.” Ind. Code § 34-26-5-1. Indiana Code Section 34-26-5-2(c) provides, in part: “A parent . . . may file a petition for an order for protection on behalf of a child against a: (1) family or household member who commits an act of domestic or family violence” Indiana Code Section 34-6-2-34.5 defines “domestic or family violence” as:

except for an act of self-defense, the occurrence of at least one (1) of the following acts committed by a family or household member:

(1) Attempting to cause, threatening to cause, or causing physical harm to another family or household member.

(2) Placing a family or household member in fear of physical harm.

* * * * *

[13] “To obtain a protective order, the petitioner must show the respondent represents—present tense—a credible threat to the safety of a petitioner or a member of a petitioner’s household.” *S.H. v. D.W.*, 139 N.E.3d 214, 219-20 (Ind. 2020) (citation and quotation marks omitted). If the trial court finds that the petitioner has met this burden by a preponderance of the evidence, “the court shall grant relief necessary to bring about a cessation of the violence or the threat of violence.” *Id.* (citing in part I.C. § 34-26-5-9).

[14] Father argues that he was not a credible threat to Child’s safety and that Father’s actions “of restraint and self-defense were reasonable given the conduct of the child towards him and did not warrant the issuance of an Order for Protection.”¹ Appellant’s Br. p. 11. Father’s own testimony, however, established that, during an argument between Father and Child, Father grabbed Child, restrained Child, and put his hand over Child’s mouth. Father acknowledged that these incidents happen every couple of weeks. As a result of these incidents, Child sustained an injury to his lip and hit his head on a windowsill. Although Father claims that the incident was self-defense, Father’s own testimony established that Father followed Child to his bedroom and escalated the argument.

[15] Further, during the *in camera* interview, Child told the trial court that “things started getting . . . bad when he was approximately thirteen”; Child and Father argue “fairly frequently”; Child “does not feel safe when the arguments occur”; and Father has put his hands on Child, including Father holding his hand over Child’s mouth, squeezing Child’s cheeks, pushing Child down, holding Child on the bed, holding Child’s arms tightly, and pushing Child into a wall. Tr. Vol. II pp. 48-49. As a result of the incidents, Child has sustained a cut on his lower lip from his braces and “hit his head on the window sill [sic].” *Id.*

¹ Father also argues that the trial court allowed Mother to present evidence beyond the petition’s allegations. The petition described one incident between Father and Child and alleged that these incidents occur frequently. Accordingly, the petition alleged that more than one incident occurred, and Father should have anticipated the evidence regarding multiple incidents. Father’s argument is unpersuasive.

[16] Based upon this evidence, we conclude that Mother and Child proved by a preponderance of the evidence that domestic or family violence was occurring and that Father was a credible threat to Child's safety. Accordingly, the trial court did not err by granting the order for protection.

[17] As noted below, however, we take issue with the length of time of two years for the protection order and the order prohibiting Father from having any contact with Child directly or indirectly. This order means that Father is prohibited from calling Child, sending Child a birthday card or present, attending school functions, attending extracurricular activities, etc. If Father does have contact, he could be charged with invasion of privacy, a Class A misdemeanor. We find that Mother presented insufficient evidence to warrant a two-year order of protection with absolutely no contact between Father and Child, and the order exceeded that which was necessary to stop the violence.

II. Parenting Time

[18] Next, Father, relying in part upon the parenting time modification statute, claims that the trial court should have granted Father supervised parenting time in the protection order. Father's argument requires that we consider the relationship between the protection order statutes and parenting time modification statutes. "[S]tatutes concerning the same subject matter must be read together to harmonize and give effect to each." *Merritt v. State*, 829 N.E.2d 472, 475 (Ind. 2005). The relationship between these statutes is problematic, and the statutes "have an uneasy legal relationship." 14 IND. PRAC., FAMILY LAW § 3:7, *Orders for protection and parenting time*.

[19] We begin by emphasizing that “[t]he Fourteenth Amendment to the United States Constitution protects the traditional right of parents to establish a home and raise their children.” *K.T.K. v. Indiana Dep’t of Child Servs., Dearborn Cnty. Off.*, 989 N.E.2d 1225, 1230 (Ind. 2013). The parent-child relationship is “one of the most valued relationships in our culture.” *Id.* “A parent’s interest in the upbringing of their child is ‘perhaps the oldest of the fundamental liberty interests recognized by th[e] [c]ourt[s].’” *Id.* (quoting *Troxel v. Granville*, 530 U.S. 57, 65, 120 S. Ct. 2054 (2000)). “We also recognize, however, that parental interests are not absolute.” *Id.*

A. Protection Order Statutes

[20] The purpose of an order for protection is to promote the “protection and safety of all victims of domestic or family violence in a fair, prompt, and effective manner” and to prevent future domestic violence and family violence. I.C. § 34-26-5-1. Thus, an order for protection can bring an immediate cessation of abuse. Here, the trial court entered an ex parte order and then properly transferred the matter to the paternity court for consideration of the protection order.² The court then had thirty days to conduct a hearing on the petition. *See* I.C. § 34-26-5-10.

² Indiana Code Section 34-26-5-6(4) provides:

If a person who petitions for an ex parte order for protection also has a pending case involving:
(A) the respondent; or

[21] Indiana Code Section 34-26-5-9(d) provides:

A court may grant the following relief after notice and a hearing, whether or not a respondent appears, in an order for protection or in a modification of an order for protection:

(1) Grant the relief under subsection (c).

(2) Specify arrangements for parenting time of a minor child by a respondent and:

(A) **require supervision by a third party**; or

(B) **deny parenting time**;

if necessary to protect the safety of a petitioner or child.

(emphasis added). A trial court, thus, may deny parenting time or order supervised parenting time where an order for protection is granted.³ The statutes allow for the issuance of an order for protection for a two-year period, or the trial court may choose a different length of time. *See* I.C. § 34-26-5-9 (“[A]n order for protection . . . is effective for two (2) years after the date of

(B) a child of the petitioner and respondent;

the court that has been petitioned for relief shall immediately consider the ex parte petition and then transfer that matter to the court in which the other case is pending.

³ The protection order statutes also allow the trial court to “appoint a guardian ad litem to represent the interests of a child of one (1) or both parents.” I.C. § 34-26-5-19.

issuance unless another date is ordered by the court.”). The trial courts have discretion to determine the duration necessary to stop the violence.

[22] We also note that Indiana Code Section 34-26-5-9(i) provides: “An order for custody, parenting time, or possession or control of property issued under this chapter is superseded by an order issued from a court exercising dissolution, legal separation, paternity, or guardianship jurisdiction over the parties.” Thus, the protection order is “superseded” by an order from the paternity court here.

B. Modification of Parenting Time Statute

[23] Father argues that a restriction of his parenting time is governed by Indiana Code Section 31-17-4-2, which provides:⁴

The court may modify an order granting or denying parenting time rights whenever modification would serve the best interests of the child. However, the court shall not restrict a parent’s parenting time rights unless the court finds that the parenting time might endanger the child’s physical health or significantly impair the child’s emotional development.

“Although the statute uses the word ‘might,’ this Court has previously interpreted the language to mean that a court may not restrict parenting time unless that parenting time ‘would’ endanger the child’s physical health or

⁴ Father argues that he had no ability to cross-examine Child due to the *in camera* interview. Indiana Code Section 31-17-4-1(b) provides: “The court may interview the child in chambers to assist the court in determining the child’s perception of whether parenting time by the noncustodial parent might endanger the child’s physical health or significantly impair the child’s emotional development.” The statute plainly allowed the trial court to conduct an *in camera* interview with Child, and the trial court did not abuse its discretion by doing so.

emotional development.” *S.M. v. A.A.*, 136 N.E.3d 227, 230 (Ind. Ct. App. 2019) (citing *Stewart v. Stewart*, 521 N.E.2d 956, 960 n.3 (Ind. Ct. App. 1988), *trans. denied*).

C. Application

- [24] To resolve the different requirements for both an order for protection and a parenting time order, we must look to both statutes and harmonize them. The protection order statutes allow a trial court to move quickly where a child’s safety is in question. The protection order statutes offer expedited and ex parte proceedings to provide a “stop gap” to stabilize the situation until the trial court can determine the best interests of the child in a modification proceeding. The protection order statutes, however, should not be used as a de facto method to modify custody and/or parenting time.
- [25] A protection order is a useful tool to protect a child where there is no pending action to address parenting time or custody, such as where the parents are married and no court action is pending. In general, however, where a court is already addressing parenting time and/or custody in a proceeding, a protection order should not be used to modify custody and/or parenting time. The use of a protection order has the effect of criminalizing family law issues. For example, here, due to the protection order, Father would be subject to criminal penalties for sending Child a text, letter, or gift or attending Child’s sporting events or school functions, even though there is no evidence that Father would be a danger to Child at such public events.

[26] These statutes also contain different standards. The modification of parenting time statute requires the trial court to restrict parenting time where such a restriction would serve the best interests of the child, but the protection order statutes do not specifically include a consideration of the best interests of the child. Moreover, although the trial court here found that domestic or family violence has occurred and that Father is a credible threat to Child’s safety—which warranted a protection order—the trial court did not find that all types of parenting time, including supervised parenting time, with Father would “endanger Child’s physical health or emotional development,” which is required to modify parenting time. I.C. § 31-17-4-2.

[27] Furthermore, the two-year duration of the protection order here is concerning. Although a trial court has the statutory authority to issue an order for protection and deny parenting time for two years, such an extreme action should be undertaken in very limited circumstances, and the evidence here does not support such an order. We are not convinced that the two-year protection order was necessary to stop the violence. We note that, even where a parent has been convicted of domestic violence, there is a rebuttable presumption that the parent is entitled to supervised parenting time.⁵ A better practice is to

⁵ Indiana Code Section 31-14-14-5, which applies in paternity proceedings, provides:

(a) This section applies if a court finds that a noncustodial parent has been convicted of a crime involving domestic or family violence that was witnessed or heard by the noncustodial parent's child.

(b) There is created a rebuttable presumption that the court shall order that the noncustodial parent's parenting time with the child must be supervised:

stabilize the situation with a limited-duration protection order and fashion a parenting time order that implements supervised parenting time, therapeutic parenting time, and/or other methods so as not to eliminate the parent-child relationship completely unless absolutely necessary to protect the child. The complete deprivation of parenting time or contact for two years here gave Father no opportunity to rectify the issues between Father and Child and was not warranted here.

[28] The trial court noted that Child was starting counseling and that the order for protection could be modified as the circumstances evolved. Custody, education, parenting time, and support issues were pending before the trial court in the paternity cause at the time the order for protection was issued. Given these circumstances, we conclude that the trial court erred by ordering a complete denial of parenting time and all contact for two years. Accordingly, we reverse the portion of the protection order that denied Father parenting time for two years. We remand with instructions to allow Father to have some contact with Child, including supervised or therapeutic parenting time between Father and Child until this matter is addressed in the paternity action.

(1) for at least one (1) year and not more than two (2) years immediately following the crime involving domestic or family violence; or

(2) until the child becomes emancipated;

whichever occurs first.

See also I.C. 31-17-2-8.3 (for dissolution proceedings).

Conclusion

- [29] The trial court did not err by granting the order for protection, but the restriction of no direct or indirect contact for two years was an abuse of discretion. The trial court erred by denying Father parenting time and all contact for two years under the protection order. Accordingly, we affirm in part, reverse in part, and remand for the trial court to amend the protection order to allow certain contact between Father and Child, including supervised and/or therapeutic parenting time with Child, and attendance at the Child's school functions until this matter is addressed more fully in the paternity action.
- [30] Affirmed in part, reversed in part, and remanded.

Riley, J., and May, J., concur.