MEMORANDUM DECISION

ATTORNEY FOR APPELLANT

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IN THE COURT OF APPEALS OF INDIANA

A.A.,

Appellant-Respondent,

v.

K.A.,

Appellee-Petitioner,

April 18, 2022

Court of Appeals Case No. 21A-PO-2051

Appeal from the Morgan Superior Court

The Honorable Sara Dungan, Judge

Trial Court Cause No. 55D03-2104-PO-511

Robb, Judge.

Case Summary and Issue

[1] K.A. was granted an ex parte order for protection from A.A. Following multiple hearings, the trial court issued a permanent order for protection. A.A. now appeals, raising a single issue for our review which we restate as whether there was sufficient evidence to support the issuance of the protective order. Concluding there was sufficient evidence to support the issuance of the protective order, we affirm.

Facts and Procedural History

[2] Around November 1, 2020, A.A. and K.A. separated and on February 16, 2021, they dissolved their marriage. On March 25, K.A. filed a petition requesting an order for protection against A.A. alleging that she had been a victim of stalking and repeated acts of harassment. *See* Appellant's Appendix, Volume II at 12. In her petition, K.A. enumerated five incidents claiming they demonstrated stalking and harassment.

[3] First, on November 20, 2020, while A.A. was picking up their children for a parenting exchange, "he started cussing [K.A.] out" and told her she would "regret the divorce[.]" Transcript of Evidence, Volume 2 at 8. K.A. testified that A.A. "was very angry when he said it" and that she "took it as a threat[.]" *Id.* at 17. Next, on December 25, 2020, K.A. was picking the kids up from A.A.'s home. When she arrived, A.A. "was belligerently drunk [and] locked himself in the garage." *Id.* at 18. A.A. called K.A. and threatened to kill her as well as take

his own life. The police were then contacted and dispatched for a "suicide attempt." *Id.* at 53. A.A. gave Officer Gary Rohland permission to make a forced entry into the house if necessary.[1]

[4] On March 10, 2021, A.A. had been watching the family dog who had just had puppies. A.A. and K.A. both worked at Ray Skillman Hyundai in Greenwood during this time.[2] A.A. brought the dogs into work and left them in K.A.'s office. A.A. told K.A. that she "needed to take the dogs, or he was going to kill them." *Id.* at 12. In her petition K.A. had originally stated that A.A. "was going to have [her] fired or killed." Appellant's App., Vol. II at 14. However, K.A. clarified at the hearing that A.A. did not threaten her but the dogs. *See* Tr., Vol. 2 at 23. Subsequently, on March 19, A.A. had an "outburst" in K.A.'s office and would not leave. *Id.* at 13. K.A. claimed that office manager Lisa Philpott had to come in and get A.A. to leave.[3] Lastly, on March 25, K.A. was leaving her home to go to work when A.A. drove by her house, called her, and told her to watch her back.[4]

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[1] K.A. testified that she told Officer Rohland that A.A. threatened her; however, Officer Rohland testified that he did not recall K.A. telling him that and that if she had, it would have been in his report. *See* Tr., Vol. 2 at 56.

[2] K.A. also indicated that on December 20, 2020, managers at Ray Skillman had created a document stating that A.A. was not allowed to contact K.A. at work. And although this may be evidence that A.A. was harassing K.A. at their place of work, it is not itself an incident of harassment.

[3] Philpott does not remember ever having to remove A.A. from K.A.'s office. *See* Tr., Vol. 2 at 43-44. Also, K.A.'s timecard suggests that on March 19 she took a sick day. *See* Appellant's App., Vol II at 20. However, K.A. claims she was in the office on March 19 for only ten to fifteen minutes to complete a deposit.

[4] K.A.'s timecard indicates that she did not go into the office on March 25.

[5] On April 5, the trial court entered an ex parte order granting K.A. an order for protection. On April 23, A.A. filed a motion for hearing. After multiple hearings, the trial court issued its permanent order for protection finding:

> f. [A.A.] represents a credible threat to the safety of [K.A.] or a member of [K.A.'s] household.
>
> g. [K.A.] has shown, by a preponderance of the evidence, that stalking or repeated acts of harassment has occurred sufficient to justify the issuance of this Order.

Appealed Order at 2. A.A. now appeals. Additional facts will be provided as necessary.

Discussion and Decision

I. Standard of Review

[6] Protective orders are similar to injunctions, and therefore in granting such an order the trial court must sua sponte make special findings of fact and conclusions thereon. *Hanauer v. Hanauer*, 981 N.E.2d 147, 148 (Ind. Ct. App. 2013) (citing Ind. Trial Rule 52(A)(1)). We apply a two-tiered standard of review: we first determine whether the evidence supports the findings, and then we determine whether the findings support the order. *Id.* at 149. In deference to the trial court's proximity to the issues, we disturb the order only where there is no evidence supporting the findings or the findings fail to support the order. *Koch Dev. Corp. v. Koch*, 996 N.E.2d 358, 369 (Ind. Ct. App. 2013), *trans. denied*. We do not reweigh evidence or reassess witness credibility, and we

consider only the evidence favorable to the trial court's order. *Id.* The party appealing the order must establish that the findings are clearly erroneous. *Id.* "Findings are clearly erroneous when a review of the record leaves us firmly convinced that a mistake has been made. We do not defer to conclusions of law, however, and evaluate them *de novo*." *Mysliwy v. Mysliwy*, 953 N.E.2d 1072, 1076 (Ind. Ct. App. 2011) (citation omitted), *trans. denied*.

[7] However, K.A. has failed to file an appellees' brief, and therefore we will not undertake the burden of developing arguments for her. *Jenkins v. Jenkins*, 17 N.E.3d 350, 351 (Ind. Ct. App. 2014). Instead, we apply a less stringent standard of review and will reverse upon a showing of prima facie error, which is error "at first sight, on first appearance, or on the face of it." *Orlich v. Orlich*, 859 N.E.2d 671, 673 (Ind. Ct. App. 2006). To determine whether reversal is required, we are still obligated to correctly apply the law to the facts in the record. *Jenkins*, 17 N.E.3d at 352.

II. Order for Protection

[8] The Indiana Civil Protection Order Act was enacted 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, family violence, and harassment." Ind. Code § 34-26-5-1. Domestic violence includes stalking, which is defined as: "a knowing or an intentional course of conduct involving repeated or continuing harassment of another person that would cause a reasonable person to feel terrorized, frightened, intimidated, or threatened and

that actually causes the victim to feel terrorized, frightened, intimidated, or threatened." Ind. Code § 35-45-10-1. However, stalking "does not include statutorily or constitutionally protected activity." *Id.*

[9] Harassment is defined as: "conduct directed toward a victim that includes but is not limited to repeated or continuing impermissible contact that would cause a reasonable person to suffer emotional distress and that actually causes the victim to suffer emotional distress." Ind. Code § 35-45-10-2. Impermissible contact includes "[f]ollowing or pursuing the victim" or "[c]ommunicating with the victim[.]" Ind. Code § 35-45-10-3. And, as with stalking, "[h]arassment does not include statutorily or constitutionally protected activity[.]" Ind. Code § 35-45-10-2.

[10] A person who has been a victim of stalking may file a petition for a protective order. Ind. Code § 34-26-5-2(a).

> A finding that domestic or family violence or harassment has occurred sufficient to justify the issuance of an order . . . means that a respondent represents a credible threat to the safety of a petitioner or a member of a petitioner's household. Upon a showing of domestic or family violence or harassment 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.

Ind. Code § 34-26-5-9(g). We have also noted the "significant ramifications of an improperly granted protective order[,]" which can pose "a considerable threat to the respondent's liberty." *Barger v. Barger*, 887 N.E.2d 990, 993-94

(Ind. Ct. App. 2008). "For example, at the state level, violation of the trial court's protective order is 'punishable by confinement in jail, prison, and/or a fine.'" *Id.* at 993 (quoting Ind. Code § 34-26-5-3).

[11] A.A. argues that "[t]here is considerable reason to question the reliability of K.A.'s statements." Appellant's Brief at 23. Specifically, A.A. highlights discrepancies between K.A.'s petition and testimony and the discrepancy between K.A.'s testimony and that of Philpott and Officer Rohland. However, this argument is simply a request for us to reweigh the evidence and judge witness credibility, which we will not do. *Koch*, 996 N.E.2d at 369. We agree there are multiple occasions where witness testimony contradicts K.A.'s claims, but these inconsistencies were before the trial court and in granting the protective order, the trial court seemingly determined that K.A.'s version of events was more credible.

[12] A.A. also contends that "[n]ot once did K.A. testify that she felt terrorized, frightened, intimidated, or threatened."[5] Appellant's Br. at 22. However, K.A. testified that during the November 20 incident when A.A. said she would "regret the divorce" she took it as a threat because of how angry he was when

[5] K.A. claimed that prior to obtaining the ex parte order of protection she was receiving forty to fifty texts a day from A.A. *See* Tr., Vol. 2 at 10. However, she changed phone providers and no longer has any of the text messages. Thus, these messages cannot be considered. *See Maurer v. Cobb-Maurer*, 994 N.E.2d 753, 758 (Ind. Ct. App. 2013) (stating "the trial court could not have issued its order in this case based on the content of any messages not entered into evidence").

he said it. Tr., Vol. 2 at 17. During the December 25 incident, A.A. called K.A. multiple times while drunk and then Facetimed her and said,

> I'm going to kill you, you're a c*nt, you're a worthless piece of sh*t. I'm killing myself. I'm in the garage. The car is running.

Id. at 18. Further, K.A. testified that during the time they worked at the same Ray Skillman location,

> [A.A.] would come in my office, he would harass me. [Management] made up an agreement saying that he wasn't allowed to come into my office. He wasn't allowed to talk to me. . . . [But] he would walk by my office, come in, saying he was going to take the kids from me. Make my life hell.

Id. at 10.

[13] On March 10, A.A. brought their family dog and its three puppies into the office and threatened to have K.A. fired and threatened to kill the dogs. Subsequently, on March 19, A.A. was angry and had an "outburst" and refused to leave K.A.'s office. *Id.* at 13. Lastly, on or about March 25, A.A. drove by K.A.'s house in the morning and called her and told her to "watch her back[.]" *Id.* at 81. After a review of the record, we conclude that there was sufficient probative evidence presented at the hearings to support a finding that the contacts in evidence would cause a reasonable person to feel terrorized, frightened, intimidated, or threatened. Therefore, there was sufficient evidence to support the trial court's issuance of a protective order.

Conclusion

[14] We conclude there was sufficient evidence to support the issuance of the protective order. Accordingly, we affirm.

[15] Affirmed.

Riley, J., and Molter, J., concur.