MEMORANDUM DECISION

ATTORNEY FOR APPELLANT

Nancy A. McCaslin
McCaslin & McCaslin
Elkhart, Indiana

IN THE
COURT OF APPEALS OF INDIANA

R.S.W.,
Appellant-Respondent,

v.

G.M.W.,
Appellee-Petitioner.

May 27, 2022

Court of Appeals Case No. 21A-PO-2287

Appeal from the Elkhart Superior Court

The Honorable Kristine A. Osterday, Judge

Trial Court Cause No. 20D01-2107-PO-572

Friedlander, Senior Judge.

Statement of the Case

[1] R.S.W. appeals the trial court's issuance of an order of protection in favor of his sister, G.M.W. We affirm.

Issue

[2] R.S.W. presents one issue for our review: whether there was sufficient evidence to support the entry of a protective order in favor of G.M.W.

Facts and Procedural History

[3] In July 2021, G.M.W. filed for a protective order against her brother, R.S.W., alleging she was the victim of repeated acts of harassment by R.S.W. The harassment stems from hostility between R.S.W. and his siblings regarding the care of their mother and subsequently the settlement of her estate. In September the court held a hearing on G.M.W.'s petition. Following the presentation of evidence, the court granted the protective order. R.S.W. now appeals.

Discussion and Decision

[4] We begin by noting that G.M.W. has not filed an appellee's brief. When an appellee fails to submit a brief, we do not undertake the burden of developing arguments for the appellee, and we apply a less stringent standard of review. *Jenkins v. Jenkins*, 17 N.E.3d 350 (Ind. Ct. App. 2014). Thus, we may reverse if the appellant establishes prima facie error, which is error at first sight, on first appearance, or on the face of it. *Id.* Yet, we remain obligated to correctly apply the law to the facts in order to determine whether reversal is required. *Id.*

[5] R.S.W. argues the evidence was insufficient to support the entry of the protective order in favor of G.M.W. When considering the sufficiency of the

evidence supporting a decision to issue an order of protection, we do not reweigh the evidence or judge the credibility of witnesses. *L.O. v. D.O.*, 124 N.E.3d 1237 (Ind. Ct. App. 2019). We consider only the evidence and reasonable inferences therefrom that support the trial court's judgment. *Id.* We determine whether the evidence supports the court's findings and whether the findings support the judgment. *R.W. v. J.W.*, 160 N.E.3d 195 (Ind. Ct. App. 2020). The party appealing the order must establish that the findings are clearly erroneous, meaning a review of the record leaves us firmly convinced that a mistake has been made. *Id.*

[6] G.M.W. alleged, and the trial court determined, that R.S.W. had committed repeated acts of harassment. The Indiana Civil Protection Order Act (CPOA) provides in part: "A finding that . . . harassment has occurred sufficient to justify the issuance of an order under this section 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 . . . 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) (2019). For purposes of the CPOA, "harassment" is "conduct directed toward a victim that includes, but is not limited to, repeated or continuing impermissible contact: (1) that would cause a reasonable person to suffer emotional distress; and (2) that actually causes the victim to suffer emotional distress." Ind. Code § 34-6-2-51.5(a) (2019).

[7] The trial court determined that R.S.W. "represents a credible threat to the safety of [G.M.W.]" and that G.M.W. "has shown, by a preponderance of the evidence, that repeated acts of harassment ha[ve] occurred sufficient to justify the issuance of this Order." Appellant's App. Vol. II, p.8 (Order for Protection, Findings f., g.). R.S.W. challenges both of these findings, arguing that G.M.W.'s petition did not allege a threat or safety issue and that the emails admitted into evidence "should not have been considered 'repeated' or 'unpermitted contacts.'" Appellant's Br. pp. 20-21.

[8] To substantiate her claim of harassment, G.M.W. presented three emails she received from R.S.W. Exhibit A1 contains an email with the subject line "you are mean" and the following communication:

> you are mean, and crruel [sic] we have not eaten,,,, we have f**king bbabysat [sic] a 42 yeaar [sic] manic old boyfor [sic] 3 hrs . . . he neds [sic] help . . . you? . . . f thanksgo [sic] tf**king[o [sic] hell

Ex. Vol. 3, p. 4. The subject line of the email in Exhibit A2 is ""f**k you" and the email states:

> this is because of you . . . if you'd answer the phone AND TALK TO MOM . . . YOU WOULD KNOW . . . YOUR ASSHOLE BROTHER . . . JEFF . . . IS THE CAUSE OF THIS
>
> child services,,,,,/on me?do [sic] not ever set foot on this "home" . . . stay away forever

Id. at 5. The final email, Exhibit A3, states:

> you must know that unbeknownst to us,,,,,,jeff recorded us without permission . . . and who knows without whom and whomelse [sic] . . . he was not invited here today . . . nor were his intended . . . purpose . . . not only are we deeply hurt,,,but we are greatly hurt by your insinuation . . . that we would be otherwise upright and somewhat moral humans . . . so f**k you . . . to eternity

Id. at 6.

[9] G.M.W. testified that R.S.W. is "very hostile" and "uses abusive language" which makes her "feel unsafe." Tr. Vol. 2, p. 10. She further explained that she "wouldn't feel comfortable in the same room" with R.S.W. and that she does not "feel comfortable in the same city" as him. *Id.* at 17. Additionally, although they live in different cities in different areas of the state, G.M.W. testified that she is "always looking over my shoulder even . . . walking around in [the city in which she resides]. It's not a good feeling. I don't trust [R.S.W.]." *Id.* G.M.W. described R.S.W. as "very demeaning," "very aggressive," and exhibiting "controlling behavior" that has resulted in her feeling "uncomfortable." *Id.* at 29, 28, 30. G.M.W. testified that for both work and personal matters she will need to travel to the city in which R.S.W. resides, and she wants to be protected from any incidental contact with him as well as any contact she would have to have with him in the process of settling their mother's estate. G.M.W. also testified that she wants to visit her parents' graves and to "feel safe doing that." *Id.* at 31. Regarding her relationship with

R.S.W., she stated, "It's uncomfortable and it feels scary. I don't feel safe anymore." *Id.* at 30.

[10] For his part, R.S.W. testified that at the time the emails were sent he was "under a great deal of stress looking after my mother, who was in failing health, and I wasn't getting assistance from anyone." *Id.* at 34.

[11] In light of all the evidence, we cannot say that G.M.W.'s distress is unreasonable. G.M.W.'s testimony shows that she has a very strained relationship with her brother and that he has exhibited hostility and used menacing language toward her. Moreover, at the hearing, the court indicated it had been involved in the estate matter and called the ongoing family dispute a "volatile situation." *Id.* at 40.

[12] There was also ample evidence that G.M.W. actually experienced emotional distress as a result of her brother's behavior. She testified to feeling scared and unsafe and to watching over her shoulder wherever she goes. We will not reevaluate this credibility determination by the trial court. *See L.O.*, 124 N.E.3d 1237.

Conclusion

[13] Upon review of the record, we are unconvinced that the trial court made a mistake. Accordingly, we cannot say the grant of the protective order was clearly erroneous.

[14] Judgment affirmed.

Bailey, J., and Weissmann, J., concur.