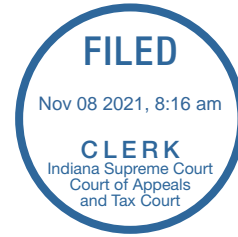


MEMORANDUM DECISION

Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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IN THE COURT OF APPEALS OF INDIANA

Colt Key,
Appellant-Respondent,

v.

Lindsey Key,
Appellee-Petitioner.

November 8, 2021

Court of Appeals Case No.
21A-PO-955

Appeal from the Johnson Superior
Court

The Honorable Marla K. Clark,
Judge

Trial Court Cause No.
41D04-2104-PO-197

Mathias, Judge.

- [1] Colt Key appeals the trial court's issuance of a protective order on behalf of Lindsey Key. Colt presents three issues for our review, which we consolidate and restate as two issues:

I. Whether the trial court’s findings are inadequate.

II. Whether the trial court clearly erred when it issued the protective order.

[2] We affirm.

Facts and Procedural History

[3] Colt and Lindsey are married and have two children together. On December 2, 2019, Colt and Lindsey separated, and Colt moved out of the family home. On December 22, Colt began tracking Lindsey’s movements using a “Tile” GPS tracking device he placed in her car without her knowledge. Tr. p. 20. Colt was “showing up at places” where Lindsey was without explanation, and he texted Lindsey photographs taken of her surreptitiously while she was out in public. *Id.* In January 2020, Colt, with the help of his friend John House, installed a “trail camera” in a tree near Lindsey’s home. *Id.* pp. 4, 30. The camera faced the driveway and front of the house. Colt asked House not to tell anyone about the camera, and Lindsey did not know about the camera until sometime later. Lindsey and the children moved out of that house in February.

[4] Colt filed a petition for dissolution of the marriage. On February 21, 2020, the dissolution court issued a provisional order stating in relevant part that “[t]he parties shall limit their communication with one another to matters involving the children” and that Colt was “prohibited from ‘tracking,’ following, or stalking [Lindsey] or having others do so on his behalf.” Appellee’s App. Vol. 2 at 15. Despite that order, in March and April, Colt sent Lindsey text messages

that included photographs of Lindsey while she was out in public. Colt also sent Lindsey text messages indicating that he was tracking her whereabouts.

- [5] On April 25, 2021, Lindsey filed a petition for a protective order alleging that Colt had stalked and harassed her. Following an evidentiary hearing, the trial court found that Colt presented a credible threat to Lindsey’s safety or the safety of their children and that Colt had committed stalking and repeated acts of harassment against Lindsey. Accordingly, the court issued a protective order. This appeal ensued.

Discussion and Decision

Issue One: Findings

- [6] Colt first contends that the trial court’s findings are inadequate. Specifically, Colt asserts that the court’s findings do not comply with “[Indiana Trial Rule 52\(A\)](#) or Indiana case law.” Appellant’s Br. at 13. We cannot agree.
- [7] In granting a protective order, the trial court must sua sponte make special findings of fact and conclusions thereon under [Indiana Trial Rule 52\(A\)](#). [Hanauer v. Hanauer](#), 981 N.E.2d 147, 148 (Ind. Ct. App. 2013). However, nothing in [Trial Rule 52\(A\)](#) nor the case law cited by Colt requires the court to make findings any more specific than those made by the court here. Again, the trial court found that Colt presented a credible threat to Lindsey’s safety or the safety of their children and that Colt had committed stalking and repeated acts of harassment against Lindsey. We hold that those findings are adequately specific under both [Trial Rule 52\(A\)](#) and relevant case law.

Issue Two: Sufficiency of the Evidence

- [8] Colt next contends that the trial court erred when it issued the protective order. Our standard of review is well settled.

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. 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. We do not reweigh evidence or reassess witness credibility, and we consider only the evidence favorable to the trial court's order. The party appealing the order must establish that the findings are clearly erroneous. 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*.

Fox v. Bonam, 45 N.E.3d 794, 798–99 (Ind. Ct. App. 2015) (citations omitted).

- [9] As this court has explained:

Our legislature has indicated that the Indiana Civil Protection Order Act shall be construed to promote the protection and safety of all victims of domestic violence “in a fair, prompt, and effective manner” and the prevention of future domestic violence. [Ind. Code § 34-26-5-1](#) [(2021)]. Pursuant to [Indiana Code Section 34-6-2-34.5](#), domestic violence includes stalking as defined by [Indiana Code Section 35-45-10-1](#): “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.” “The term does not include statutorily or constitutionally protected activity.” *Id.* [Indiana](#)

Code Section 35-45-10-2 defines harassment 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.” Impermissible contact “includes but is not limited to knowingly or intentionally following or pursuing the victim.” [Ind. Code § 35-45-10-3](#). “Harassment does not include statutorily or constitutionally protected activity[.]” [Ind. Code § 35-45-10-2](#).

Id. at 798. Further, “[t]o 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 (Ind. 2020) (quoting § 34-26-5-9(g)). “Thus, the respondent must pose a threat to a protected person’s safety when the petitioner seeks relief.” *Id.*

[10] Colt contends that Lindsey did not present evidence of stalking or harassment sufficient to support the protective order. Specifically, Colt maintains that there is no evidence that his conduct constituted stalking or harassment or that Lindsey actually felt terrorized, frightened, intimidated, threatened, or emotional distress. See [Fox](#), 45 N.E.3d at 798. Colt also contends that Lindsey did not present evidence that, at the time of the hearing, Colt presented a credible threat to the safety of either Lindsey or the children. See [S.H.](#), 139 N.E.3d at 219. We address each contention in turn.

Stalking

[11] Lindsey presented ample evidence that Colt has committed repeated or continuing harassment of her that would cause a reasonable person to feel

terrorized, frightened, intimidated, or threatened. *See Fox, 45 N.E.3d at 798.* For instance, Colt surreptitiously placed a camera outside of her home and a GPS tracking device in her car. He also texts Lindsey photos and messages indicating that he is monitoring her whereabouts “all the time,” and he frequently shows up places where she is hanging out with friends. Tr. p. 15. Lindsey testified that it is “typical” for Colt to text her something like, “I know you’re out and I know how long you were out.” *Id.* p. 19. And Colt has shown up, uninvited and unannounced, at Lindsey’s house late at night while everyone is sleeping.

[12] Further, Lindsey presented evidence to support a reasonable inference that Colt’s conduct caused her to feel terrorized, frightened, intimidated, or threatened. *See Fox, 45 N.E.3d at 798.* Lindsey testified that Colt’s behavior is “extremely erratic and unpredictable,” and she testified that his erratic behavior is “escalating.” Tr. pp. 16–17. Lindsey testified that Colt has shown up at the children’s baseball games intoxicated, and she stated that Colt is “irrational when he drinks.” *Id.* at 17. She testified that Colt “harass[es]” both her and the children. *Id.* at 17, 23. And she testified that Colt’s behavior is “getting worse” and it is “affecting [her] work and [her] children.” *Id.* at 21. We hold that the evidence most favorable to the trial court’s judgment is sufficient to prove stalking. *See, e.g., Andrews v. Ivie, 956 N.E.2d 720, 724-25* (Ind. Ct. App. 2011) (holding evidence sufficient to prove stalking where victim testified that she was concerned about Andrews’ “irrational mind” and that his contacts were “very upsetting” and “disturbing”).

Harassment

[13] That same evidence is sufficient to prove that Colt made repeated or continuing impermissible contact with Lindsey that would cause a reasonable person to suffer emotional distress and that caused her to suffer emotional distress. *See Fox*, 45 N.E.3d at 798. We reject Colt’s assertion that there was no evidence that his contact was impermissible. Colt knowingly and repeatedly violated the dissolution court’s February 2020 no-stalking order. Colt’s contentions on appeal are merely a request that we reweigh the evidence, which we cannot and will not do. We hold that the trial court did not clearly err when it found that Colt had committed harassment to support the issuance of the protective order.

Credible Present Threat

[14] Finally, the evidence supports the trial court’s finding that Colt presents a credible threat to the safety of Lindsey or the children. During the hearing, Lindsey testified to recent incidents at the children’s baseball games where Colt was “drunk” and harassed her. Tr. p. 22. And Lindsey’s mother testified that, recently, Colt was drunk and “cussed at” Lindsey during a baseball game. *Id.* at 36. Colt recently showed up outside Lindsey’s apartment, uninvited and unannounced, early on a Saturday morning. Lindsey testified that Colt continues to monitor her whereabouts, and that Colt’s erratic behavior “is escalating.” *Id.* at 16. Colt “always carries a gun,” and he has broken into her home, on at least one occasion, in the middle of the night, looking for her. *Id.* at 17, 33.

[15] Again, “a trial court may issue a protective order only if presented with enough evidence that the respondent represents a present, credible threat to the petitioner’s safety.” *S.H.*, 139 N.E.3d at 221. While much of Colt’s stalking and harassment occurred in early 2020, the testimony shows that Colt continues to stalk and harass Lindsey, and Lindsey testified that his behavior is escalating. We must conclude that, on this record, and with due deference to the trial judge’s observations and appraisals of witness credibility in the courtroom, Lindsey presented sufficient evidence that Colt poses a present, credible threat to her safety or the children’s safety. Accordingly, we hold that the trial court did not clearly err when it issued the protective order.

[16] Affirmed.

Tavitas, J., and Weissmann, J., concur.