MEMORANDUM DECISION

ATTORNEY FOR APPELLANT

Justin K. Clouser
Bolinger Law Firm
Kokomo, Indiana

IN THE COURT OF APPEALS OF INDIANA

M.B.,
Appellant-Respondent,

v.

J.D.,
Appellee-Petitioner.

November 19, 2021

Court of Appeals Case No. 21A-PO-524

Appeal from the Grant Superior Court

The Honorable Brian F. McLane, Magistrate

Trial Court Cause No. 27D02-2011-PO-212

Molter, Judge.

[1] J.D. obtained an ex parte protective order against M.B., her former boyfriend, and M.B. did not appeal the order or request a hearing. Four months later, the trial court held a hearing on J.D.'s request to hold M.B. in contempt for violating the protective order, and M.B. objected to the protective order for the

first time at the hearing. The trial court declined to set the protective order aside and declined to hold M.B. in contempt, and M.B. appealed. Because M.B. forfeited his original appeal and has not identified any basis to set the order aside under Indiana Trial Rule 60(B), we affirm.

Facts and Procedural History

[2] J.D. and M.B. dated for about two-and-a-half years beginning in seventh grade. Tr. at 7. About four months after J.D. ended their relationship in June 2020, her mother filed a request for a protective order on J.D.'s behalf asking the court to prohibit M.B. from, among other things, contacting or communicating with her. Appellant's App. Vol. 2 at 4–34. J.D. alleged that M.B. had yelled at her and her mother; that he had left bruises and scratches on her; that he attempted to communicate with her incessantly; that he threatened one of her friends; and that it was necessary for her friends to escort her at school. *Id.* at 6.

[3] The same day, November 4, 2020, the trial court granted J.D.'s request and issued an ex parte protective order. *Id.* at 35–36. The trial court found J.D. had proved by a preponderance of evidence that M.B. had committed domestic or family violence against J.D. and that M.B. presented a credible threat to J.D.'s safety. *Id.* at 35. The trial court enjoined M.B. from committing domestic or family violence against J.D. and prohibited him from "harassing, annoying, telephoning, contacting directly or indirectly communicating with [J.D.]." *Id.* It also ordered M.B. to stay away from J.D.'s home. *Id.* M.B. did

not appeal the entry of the protective order, and it remains in effect until November 4, 2022. *Id*. at 36.

[4] Close to four months later, on February 26, 2021, J.D.'s mother wrote a letter to the court alleging that M.B. had violated the order, and the court set the matter for hearing on March 8, 2021. *Id.* at 38; Tr. at 3–4. J.D. alleged M.B. repeatedly stood near her school locker while she was there, Tr. at 21–24; stood outside one of her classrooms even though he had no reason to be there, *id.* at 23–24; and went to a batting cage in the same building where J.D. took a dance class even though M.B. knew that J.D. was taking the dance class in that building. *Id.* at 29.

[5] At the beginning of the hearing, the trial court asked M.B.'s father if he wanted to object to the initial entry of the protective order, and M.B.'s father said that he did. *Id*. at 5. The trial court noted M.B. did not originally object to the initial entry of the protective order but told M.B. it would consider M.B.'s current objection, stating, "I just prefer that people have the right to be heard." *Id*. at 6. The trial court then heard testimony from J.D. and J.D.'s mother about M.B.'s actions that led to the initial entry of the protective order and M.B.'s more recent behavior that allegedly violated the protective order, specifically that M.B. would stand near J.D.'s locker and outside one of her classrooms and would use a batting cage at the same building where J.D. took dance classes. *Id*. at 7–13, 17–24, 28–32.

[6] M.B. testified that he stood near J.D.'s locker because his new girlfriend's locker was near J.D.'s locker, and he believed he needed to protect her from J.D. because "I'd heard many times that [J.D.] said stuff about [my new girlfriend]." *Id.* at 25–26. M.B. testified that he often stood outside J.D.'s classroom because his new girlfriend was also in that classroom. *Id.* at 23. As to M.B's use of the batting cage at the building where J.D. took a dance class, M.B admitted he initially knew when J.D. attended the dance class but claimed her schedule changed so he did not know when she would be in the building. *Id.* at 29–32.

[7] The trial court overruled M.B.'s objection to the protective order and ruled that the protective order would remain in effect. *Id.* at 20. As to M.B.'s more recent behavior, the trial court said it was most concerned about M.B.'s daily presence near J.D.'s locker. *Id.* at 35–39. Nonetheless, it denied J.D.'s request to find M.B. in contempt. *Id.* at 38. M.B. now appeals the trial court's denial of his objection to the entry of the protective order.

Discussion and Decision

[8] M.B. claims the trial court abused its discretion when it granted J.D.'s petition for a protective order. When a party initiates a timely appeal of a protective order, we determine whether the evidence supports the trial court's findings and whether the findings support its legal conclusions. *Hanauer v. Hanauer*, 981 N.E.2d 147, 148–49 (Ind. Ct. App. 2013). But here, M.B. did not appeal the November 4, 2020 protective order within 30 days, so he forfeited his right to

appeal that order. Ind. Appellate Rule 9(A)(5). In fact, M.B. did not object to the protective order until over four months later at the March 8, 2021 hearing on J.D.'s mother's request to find M.B. in contempt of the protective order. Tr. at 5.

[9] The trial court did express its willingness to reconsider its order, conveying its preference that everyone have an opportunity to be heard, Tr. at 6, but it lacked authority to do so. A trial court retains inherent authority to reconsider one of its rulings only while the matter remains interlocutory. *Mitchell v. 10th & The Bypass, LLC*, 3 N.E.3d 967, 971 (Ind. 2014); *Hanauer*, 981 N.E.2d at 148–49. Here, the protective order was final because it resolved all issues before the court. App. R. 2(H) ("A judgment is a final judgment if . . . it disposes of all claims as to all parties . . . .").

[10] To be sure, the trial court had the authority to review M.B.'s objection at the March 8 hearing as a Trial Rule 60(B) motion for relief from judgment, and we review the denial of a motion for relief from judgment for an abuse of discretion. *City of Indianapolis v. Tichy*, 122 N.E.3d 841, 845 (Ind. Ct. App. 2019). Relevant here, Trial Rule 60(B) provides that the trial court may set aside a judgment for mistake, surprise, or excusable neglect; newly discovered evidence; or fraud. Ind. Trial Rule 60(B)(1)–(3). "But a motion for relief from judgment under Indiana Trial Rule 60(B) is not a substitute for a direct appeal." *In re Paternity of P.S.S.*, 934 N.E.2d 737, 740 (Ind. 2010). "Trial Rule 60(B) motions address only the procedural, equitable grounds justifying relief from

the legal finality of a final judgment, not the legal merits of the judgment." *Id.* (quotations omitted).

[11] M.B. has not identified any Trial Rule 60(B) grounds, and instead all of his arguments are arguments that would be appropriate for challenging the merits through a direct appeal. For example, he argues his "phone calls and messages did not rise to the level of harassment" and that "[t]he legislature could not have intended the [protective order] statute to be used by high school teens to address a new break up." *See* Appellant's Br. at 9. M.B.'s argument only attacks the merits of the trial court's original decision to enter the protective order. It does not address any of the procedural, equitable grounds for setting aside a judgment.

[12] Because M.B. has not identified any basis under Trial Rule 60(B) to set aside the protective order, we cannot say the trial court abused its discretion by leaving the protective order in place.

[13] Affirmed.

Vaidik, J., and May, J., concur.