

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

B.B.,
Appellant-Respondent,

v.

K.B.,
Appellee-Petitioner

September 17, 2021
Court of Appeals Case No.
21A-PO-328
Appeal from the
Hamilton Superior Court
The Honorable
William J. Hughes, Judge
Trial Court Cause No.
29D03-2101-PO-24

Vaidik, Judge.

Case Summary

[1] B.B. appeals a protective order entered against him. We affirm.

Facts and Procedural History

- [2] In 2020, B.B.'s wife, K.B., suspected he was having an affair. On April 3, a woman came to K.B. and B.B.'s house and rang the doorbell. Believing the woman to be B.B.'s girlfriend, K.B. went to investigate. Before K.B. could get to the front door, B.B. "grabbed" her and "drug" her through the living room and dining room and into the kitchen. Tr. Vol. II p. 9. While trying to "get away" from B.B., K.B. broke some blinds. *Id.* Eventually, K.B. was able to "grab" a hold of the kitchen countertop, which caused them to fall to the ground. *Id.*
- [3] B.B. moved out of the marital home, and K.B. filed for divorce. According to K.B., at first it appeared the divorce would be smooth; however, things got "worse" as time went on. *Id.* at 7. The divorce was final on July 27, and K.B. was awarded the marital home. *See Appellee's App.* Vol. II p. 9. On July 31, K.B. was home when B.B. let himself in her house through the garage door. K.B. told B.B. he could not "barge in" her house and that she would call the police. Tr. Vol. II p. 16. B.B. dared K.B. to call the police, so she did. While K.B. was on the phone with the 911 dispatcher, B.B. gathered K.B.'s guns, put them on her bed, and took them out of the cases. K.B. was "fearful that [B.B.] was going to shoot [her]." *Id.* at 32. The dispatcher told K.B. to leave her house if she could do so safely, and she did. The police arrived and told B.B. not to return to K.B.'s house unless he had her permission or a court order. *See Ex.* pp. 73-75 (Noblesville Police Department Incident Report).

- [4] In August, B.B. “stopped by” K.B.’s house twice to drop off mail. *See* Tr. Vol. II p. 20; Appellant’s App. Vol. II pp. 18-19. During this same time, B.B. tried contacting K.B. through email, and K.B. had to block him from “multiple email addresses.” Tr. Vol. II p. 20. She also blocked his phone number.
- [5] On January 2, 2021, K.B. was home when B.B. rang her doorbell. Scared, K.B. ran into the basement and called 911. When K.B. did not answer the door, B.B. left mail and a set of keys between the storm door and the front door. The police advised K.B. to get a protective order. *See* Ex. pp. 77-78 (Noblesville Police Department Incident Report).
- [6] Three days later, on January 5, K.B. filed a petition for a protective order. K.B. alleged B.B. caused her physical harm, placed her in fear of physical harm, committed stalking against her, and committed repeated acts of harassment against her. Appellant’s App. Vol. II p. 15. The next day, the trial court issued an ex parte protective order and set a hearing. *Id.* at 24-25. Both parties appeared at the hearing and were represented by counsel. K.B. testified about the events of April 3, July 31, August, and January 2 as described above. In addition, K.B. testified she started attending counseling sessions in March 2020, before she filed for divorce, and that the sessions continued through December 2020. She said the sessions helped her “understand [their] dynamic” and “why [B.B.] keeps coming around me all the time because that’s what narcissists do is they keep[] coming around to get more of your energy and like so [B.B.] keeps coming around again. I can’t get him to stay away.” Tr. Vol. II p. 23. K.B.’s attorney testified he spent 11.3 hours on the protective order and that his hourly

rate was \$225. K.B. asked the court to order B.B. to pay a portion of her counseling expenses and attorney's fees.

[7] At the conclusion of the hearing, the trial court said a protective order was "appropriate in this case." *Id.* at 60. The court identified two independent grounds to support the order: (1) domestic or family violence and (2) stalking:

I do find that there was physical contact in the first incident that is described in [April] of 2020. I do find that that physical contact was rude, angry or insolent, therefore qualifies as battery, that qualifies as domestic or family violence.

In addition, I find that there are plenty of examples in this case of stalking. They began on July 31st and they have continued through January 2, 202[1].

Id. In addition, the court told B.B. he was disqualified from possessing firearms under federal law:

You are Brady disqualified not by an order of this court but by Federal statute as a result of findings that are being made from this court that you were in an intimate relationship with [K.B.] and a protection order is necessary and has been entered to protect her. When those two things come together, Brady disqualifies you from having a gun and that happens when you have notice of a hearing and an opportunity to be heard. And I've heard nothing to indicate that there is not an intimate relationship to support that. I'm not making that order. I'm simply advising you of what happens as a result of Federal law because this hearing has occurred and because I am making a finding that [K.B.] was your intimate partner.

Id. at 62.

[8] Thereafter, the trial court issued a protective order, which includes a “Cover Sheet” and accompanying four-page order. *See* Appellant’s App. Vol. II pp. 27-31. The order, which expires on February 3, 2023, provides:

d. This order does protect an intimate partner or child.

e. [B.B.] had notice and an opportunity to be heard.

f. [B.B.] represents a credible threat to the safety of [K.B.] or a member of [K.B.’s] household.

g. [K.B.] has shown, by a preponderance of the evidence, that domestic or family violence, stalking, or repeated acts of harassment has occurred sufficient to justify the issuance of this Order.

Id. at 28. The order prohibits B.B. from “harassing, annoying, telephoning, contacting, or directly or indirectly communicating with” K.B. and orders him to “stay away” from K.B.’s house and place of employment. *Id.* Finally, the order provides that B.B. is “Brady disqualifi[ed] under federal law” and orders him to pay \$625 of counseling expenses that K.B. incurred from July to December 2020 and \$1,000 of her attorney’s fees. *Id.* at 29.

[9] B.B. now appeals.

Discussion and Decision

I. Sufficiency of the Evidence

- [10] B.B. first contends the evidence is insufficient to support the issuance of the protective order based on domestic or family violence. In reviewing the sufficiency of the evidence to support a protective order, we neither reweigh the evidence nor judge witness credibility. *A.S. v. T.H.*, 920 N.E.2d 803, 806 (Ind. Ct. App. 2010). “We look only to the evidence of probative value and reasonable inferences that support the trial court’s judgment.” *Id.*
- [11] “A person who is or has been a victim of domestic or family violence may file a petition for an order for protection against a . . . family or household member who commits an act of domestic or family violence.” Ind. Code § 34-26-5-2(a)(1). “Domestic or family violence” means “[a]ttempting to cause, threatening to cause, or causing physical harm to another family or household member” or “[p]lacing a family or household member in fear of physical harm.” I.C. § 34-6-2-34.5. “A finding that domestic or family violence . . . 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.” I.C. § 34-26-5-9(g). “Upon a showing of domestic or family violence . . . 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.*

[12] Here, K.B. testified that on April 3, 2020, B.B. grabbed her and dragged her through their house to prevent her from discovering his affair. The trial court found B.B. committed battery, and therefore an act of domestic or family violence, against K.B., which supported the issuance of the protective order. B.B., however, argues this incident does not support the issuance of the protective order because he was not “a present” threat to K.B. when she sought the protective order in January 2021. Appellant’s Br. p. 14. As B.B. notes, the Indiana Supreme Court has said that two parties’ relationship “can change over time” and there must be “reasonable grounds to believe that the respondent **presently** intends to harm the petitioner or the petitioner’s family” in order to issue a protective order under Indiana Code section 34-26-5-9. *S.H. v. D.W.*, 139 N.E.3d 214, 220 (Ind. 2020) (emphasis added). Although B.B. battered K.B. in April 2020, K.B. presented evidence that B.B. continued to place her in fear of physical harm. On July 31, B.B. let himself into K.B.’s house. When K.B. told B.B. he couldn’t barge in and needed to leave, he collected her guns. K.B. called the police, and the police told B.B. not to return to K.B.’s house unless he had her permission or a court order. B.B., however, returned to K.B.’s house on several occasions, the last time occurring just three days before K.B. sought the protective order. The evidence is sufficient to support the trial court’s issuance of the protective order based on domestic or family violence.¹

¹ A person who is or has been a victim of domestic or family violence may seek a protective order against a person who has committed stalking. *See* I.C. § 34-26-5-2(a)(2). Here, the trial court also found a protective

II. Brady Disqualification

[13] B.B. next contends the trial court “err[red] in concluding [he] is Brady Disqualified.” Appellant’s Br. p. 15. 18 U.S.C. § 922(g)(8) provides it is “unlawful” for a person to possess firearms if the person is subject to a court order that

(A) was issued after a hearing of which such person received actual notice, and at which such person had an opportunity to participate;

(B) restrains such person from harassing, stalking, or threatening an intimate partner of such person or child of such intimate partner or person, or engaging in other conduct that would place an intimate partner in reasonable fear of bodily injury to the partner or child; and

(C)(i) includes a finding that such person represents a credible threat to the physical safety of such intimate partner or child; **or**

(ii) by its terms explicitly prohibits the use, attempted use, or threatened use of physical force against such intimate partner or child that would reasonably be expected to cause bodily injury[.]

(Emphasis added). Indiana Code section 34-26-5-9(e) requires a trial court to indicate in the protective order “if the order and the parties meet the criteria under 18 U.S.C. 922(g)(8).” Here, the trial court orally advised B.B. he is

order was warranted because B.B. committed stalking. However, because we find the evidence is sufficient to support the issuance of the protective order based on domestic or family violence, we do not address whether the evidence is sufficient to support the issuance of the protective order based on stalking.

disqualified from possessing firearms under federal law and indicated in the protective order that he is “Brady disqualified.” Appellant’s App. Vol. II pp. 27, 29, 31.

[14] B.B. challenges only one requirement of 18 U.S.C. § 922(g)(8). Specifically, he argues the “evidence does not demonstrate that [he] represents a credible threat to the physical safety of [K.B.] for purposes of finding him Brady disqualified under” 18 U.S.C. § 922(g)(8)(C)(i). Appellant’s Br. p. 18. As just recounted above, the evidence is sufficient to show B.B. represents a credible threat to K.B.’s safety. K.B. testified that after B.B. battered her in April 2020, he continued to place her in fear of physical harm. On July 31, B.B. let himself into K.B.’s house. When K.B. told B.B. to leave, he gathered her guns, put them on her bed, and took them out of the cases. K.B. called the police, and the police told B.B. not to return to K.B.’s house unless he had her permission or a court order. B.B., however, returned to K.B.’s house on several occasions, the last time occurring just three days before K.B. sought the protective order. Because the evidence supports the trial court’s finding that B.B. represents a credible threat to K.B.’s safety, the trial court properly determined he is disqualified from possessing firearms under federal law.²

² B.B. argues the trial court erred in using a “stock form document” in issuing the protective order. See Appellant’s Br. p. 17. In support, B.B. cites *Cook v. Whitsell-Sherman*, where our Supreme Court held a trial court’s “verbatim” adoption of a party’s proposed findings of fact “weakens our confidence as an appellate court that the findings are the result of considered judgment by the trial court.” 796 N.E.2d 271, 273 n.1 (Ind. 2003). But as K.B. points out, *Cook* does not address stock orders. In addition, Indiana Code section 34-26-5-3(a) specifically requires the Indiana Supreme Court’s Office of Judicial Administration to “develop and

III. Fees

[15] Last, B.B. contends the trial court erred in ordering him to pay a portion of K.B.'s counseling expenses and attorney's fees under Indiana Code section 34-26-5-9(d)(3). We review an award of these fees for an abuse of discretion.

A. Counseling Expenses

[16] B.B. argues the trial court erred in ordering him to pay \$625 of K.B.'s counseling expenses. As part of a protective order, a trial court may order the respondent to reimburse the petitioner "for expenses related to the domestic or family violence," including "counseling." I.C. § 34-26-5-9(d)(3)(D)(ii). Here, the court ordered B.B. to pay \$625 of K.B.'s counseling expenses:

I believe that the counseling expenses that have been requested are counseling expenses that [were] incurred after July, only after July through the current. I've counted them. There are eleven expenses of \$125 that were [in]curred . . . [a]ccording to Exhibit 10, which more than covers the \$1,250 in counseling fees that have been requested. **It is clear that the counseling fees have been in part as a result of the issues that arise from the stalking and the domestic violence.** I am ordering [B.B.] to pay one-half of those fees. In doing this, I am noting that [K.B.] and [B.B.] each agreed before they signed their divorce decree that expenses

adopt" "an order for protection" and provide the form "to the clerk of each court authorized to issue the orders." The court here used a stock form but tailored it to the facts of this case. *See, e.g.*, Appellant's App. Vol. II p. 29 (providing K.B. "was referred to the Decree of Dissolution regarding her claim to right of possession of 6 weapons . . . divided in said decree.").

B.B. also argues it is "extremely puzzling" the trial court found he is disqualified from possessing firearms under federal law but not under state law. Appellant's Br. p. 18. It is not puzzling, as a firearm restriction under state law is discretionary. *See* I.C. § 34-26-5-9(d)(4), (g) (providing a trial court "may" prohibit a respondent from possessing firearms and "may" direct a respondent to surrender his firearms).

in their own names incurred would be paid by each of them individually. This has already been resolved in the divorce. That's why I'm only going after the date of the divorce for these expenses and only half of it.^[3]

Tr. Vol. II pp. 62-63 (cleaned up, emphasis added).

[17] B.B. asserts K.B. “did not produce any evidence” that the sessions were related to the domestic or family violence as opposed to marital difficulties that existed in March 2020. Appellant’s Br. p. 19. Although K.B. testified she started counseling sessions in March 2020 due to problems in their marriage, she said the sessions, which continued through December 2020, helped her “understand [their] dynamic” and “why [B.B.] keeps coming around me all the time because that’s what narcissists do is they keep[] coming around to get more of your energy and like so [B.B.] keeps coming around again. **I can’t get him to stay away.**” Tr. Vol. II p. 23 (emphasis added). This testimony shows the counseling expenses were indeed related to the domestic or family violence. The court did not abuse its discretion in ordering B.B. to pay \$625 of counseling expenses K.B. incurred from July to December 2020.

³ B.B. appears to argue the trial court erred by including counseling expenses incurred before the parties’ divorce. However, as the trial court makes clear, it only included counseling expenses incurred after the parties’ divorce.

B. Attorney's Fees

[18] B.B. argues the trial court erred in ordering him to pay \$1,000 of K.B.'s attorney's fees. According to Indiana Code section 34-26-5-9(d)(3)(A), a trial court may order a protective-order respondent to pay the petitioner's attorney's fees. Here, K.B.'s attorney testified K.B. had incurred over \$2,500 in attorney's fees. In ordering B.B. to pay \$1,000 of these fees, the court said it was "pretty clear" it was "necessary" for K.B. "to have an attorney in this case" to help her obtain the protective order. Tr. Vol. II p. 63. Although B.B. claims the court should have issued specific findings showing why it was necessary, he cites no authority that Section 34-26-5-9(d)(3)(A) requires specific findings. The court did not abuse its discretion in ordering B.B. to pay less than half of K.B.'s attorney's fees.

[19] Affirmed.

Kirsch, J., and May, J., concur.