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IN THE
COURT OF APPEALS OF INDIANA

Taylor Jones,
Appellant-Respondent,
v.
G.H., by next friend, K.H.,
Appellee-Petitioner.

September 7, 2021
Court of Appeals Case No.
21A-PO-555
Appeal from the Fulton Circuit
Court
The Honorable A. Christopher
Lee, Judge
Trial Court Cause No.
25C01-2010-PO-529

Tavitas, Judge.

Case Summary

[1] Taylor Jones appeals the trial court's grant of an order for protection to G.H. ("Child"), by his next friend, K.H. ("Father"). Jones contends the evidence is insufficient to support the issuance of an order for protection. Concluding that the evidence is sufficient, we affirm the trial court's grant of an order for protection in favor of the Child. We affirm.

Issue

- [2] Jones raises two issues, which we consolidate and restate as whether the evidence supports the issuance of an order for protection.

Facts

- [3] On October 24, 2020, M.S. (“Mother”) was exercising parenting time with six-year-old Child. K.H. is Child’s father. Jones previously dated Mother, and they have a child together, W.J., who was two years old. Jones had known Child since he was one year old and considered himself “almost like a stepfather.” Tr. Vol. II p. 17.
- [4] Jones was visiting Mother at Mother’s home while her two children were present. Officer Matthew Hipsher of the Rochester Police Department was dispatched to a domestic disturbance at Mother’s residence. Child’s nose was bleeding, and there was “blood throughout the bathroom.” *Id.* at 13. Child also had a red mark on his face. Father arrived at the scene and saw that Child was “acting very timid” and “not his normal self.” *Id.* at 9. According to Jones, Child and W.J. were arguing; Jones separated the boys; and Child got a bloody nose during the incident. Jones later testified, however, that Child told Mother that Jones “hit him.” *Id.* at 20. As a result of the incident, the State charged Jones with battery resulting in bodily injury to a person under fourteen years of age, a Level 5 felony, and domestic battery, a Level 6 felony.
- [5] On October 26, 2020, K.H., as G.H.’s next friend, filed a petition for an order for protection against Jones. K.H. alleged that Jones had “committed repeated

acts of harassment against the child,” but K.H. did not identify the relationship between Jones and G.H. on the petition. Appellant’s App. Vol. II p. 8. The same day, the trial court issued an ex parte order for protection. Jones then requested a hearing pursuant to Indiana Code Section 34-26-5-10(a). The trial court held a hearing on March 4, 2021, and then issued an order that provided:

The Court finds that the Ex Parte Order of Protection shall remain in place unmodified. The Respondent, by counsel, correctly observes that the Petition incorrectly alleged repeated acts of harassment against the child. This petition is based upon a single incident and would not support a finding of harassment or stalking. The Court, however, finds that the Respondent had a sufficient relationship with the child who needs protection as per I.C. 34-6-22-44.8(6)(e). The Court further finds the Petitioner has established by the greater weight of the evidence that domestic or family violence has occurred sufficient to justify the issuance of the Order.

Id. at 28. Jones now appeals.

Analysis

- [6] Jones argues that the evidence is insufficient to support the issuance of an order for protection. The purpose of the Indiana Civil Protection Order Act (“ICPOA”) is to promote the: “(1) protection and safety of all victims of domestic or family violence in a fair, prompt, and effective manner; (2) protection and safety of all victims of harassment in a fair, prompt, and effective manner; and (3) prevention of future domestic violence, family violence, and harassment.” Ind. Code § 34-26-5-1. Indiana Code Section 34-26-5-2(c) provides:

A parent, a guardian, or another representative may file a petition for an order for protection on behalf of a child against a:

- (1) family or household member who commits an act of domestic or family violence;
- (2) person who has committed stalking under IC 35-45-10-5 or a sex offense under IC 35-42-4 against the child;
- (3) person who has committed repeated acts of harassment against the child; or
- (4) person who engaged in a course of conduct involving repeated or continuing contact with a child that is intended to prepare or condition a child for sexual activity (as defined in IC 35-42-4-13).

[7] “To 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, 219-20 (Ind. 2020) (citation and quotation marks omitted). If the trial court finds that the petitioner has met this burden 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.

[8] Given the trial court’s findings of fact and conclusions thereon, 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. *R.H. v. S.W.*, 142 N.E.3d 1010, 1014 (Ind. Ct. App. 2020). “Findings are clearly

erroneous when a review of the record leaves us firmly convinced that a mistake has been made.” *Id.* “We do not defer to conclusions of law, however, and evaluate them *de novo*.” *Id.* “In reviewing the sufficiency of the evidence to support an order for protection, we neither reweigh the evidence nor judge the credibility of witnesses.” *Tisdial v. Young*, 925 N.E.2d 783, 785 (Ind. Ct. App. 2010). “We consider only the probative evidence and reasonable inferences supporting the trial court’s judgment.” *Id.*

[9] Although the petition alleged that Jones committed repeated acts of harassment against Child, the trial court here found that Jones committed an act of domestic or family violence against Child. Accordingly, Father was required to demonstrate that Jones is Child’s “family or household member who commit[ted] an act of domestic or family violence.” I.C. § 34-26-5-2(c).

A. Family or Household Member

[10] Jones argues that he is not a “family or household member” of Child. Indiana Code Section 34-6-2-44.8 defines “family or household member” as:

(a) An individual is a “family or household member” of another person if the individual:

(1) is a current or former spouse of the other person;

(2) is dating or has dated the other person;

(3) is engaged or was engaged in a sexual relationship with the other person;

- (4) is related by blood or adoption to the other person;
- (5) is or was related by marriage to the other person;
- (6) has or previously had an established legal relationship:
 - (A) as a guardian of the other person;
 - (B) as a ward of the other person;
 - (C) as a custodian of the other person;
 - (D) as a foster parent of the other person; or
 - (E) in a capacity with respect to the other person similar to those listed in clauses (A) through (D);
- (7) has a child in common with the other person; or
- (8) has adopted a child of the other person.

(b) An individual is a “family or household member” of both persons to whom subsection (a)(1), (a)(2), (a)(3), (a)(4), (a)(5), (a)(6), (a)(7), or (a)(8) applies if the individual is a minor child of one (1) of the persons.

[11] Jones argues that none of the conditions in subsection(a) (1) through (8) applies here because Jones previously was in a relationship with Mother, not Child or Father. The trial court found, based on the testimony, that Jones had a legal relationship with Child similar to that of a guardian, ward, or custodian, and

Jones does not specifically challenge this finding. *See* I.C. § 34-6-2-44.8(a)(6)(E). Moreover, Jones ignores subsection (b). Child is a minor child, and Mother dated Jones; she engaged in a sexual relationship with Jones; and she has a child in common with Jones. Accordingly, pursuant to subsection (b), Child clearly qualifies as a “family or household member” of Jones.

B. Committed Domestic or Family Violence

[12] Next, Jones argues that he did not commit domestic or family violence against Child. Indiana Code Section 34-6-2-34.5 defines “domestic or family violence” as:

except for an act of self-defense, the occurrence of at least one (1) of the following acts committed by a family or household member:

(1) Attempting to cause, threatening to cause, or *causing physical harm to another family or household member.*

(2) Placing a family or household member in fear of physical harm.

(3) Causing a family or household member to involuntarily engage in sexual activity by force, threat of force, or duress.

(4) Abusing (as described in IC 35-46-3-0.5), torturing (as described in IC 35-46-3-0.5), mutilating (as described in IC 35-46-3-0.5), or killing a vertebrate animal without justification with the intent to threaten, intimidate, coerce, harass, or terrorize a family or household member.

For purposes of IC 34-26-5, domestic and family violence also includes stalking (as defined in IC 35-45-10-1) or a sex offense under IC 35-42-4, whether or not the stalking or sex offense is committed by a family or household member.

(emphasis added).

- [13] According to Jones, he is not a credible threat to Child, and he is “unaware of whether he caused physical harm” to Child. Appellant’s Br. p. 11. Jones claims that he “did not intend to cause any physical harm to [Child] and had no intention of causing any harm to the child.” *Id.* Jones argues that he was trying to break up a physical altercation between two children.
- [14] Jones’s argument is merely a request to reweigh the evidence and judge the credibility of the witnesses, which we cannot do. The trial court heard evidence that Child had a bloody nose and a red mark on his face; that, according to the Child, Jones hit him; and Jones was criminally charged as a result of the offense. Sufficient evidence existed to demonstrate that Jones caused physical harm to Child and, thus, committed domestic or family violence against Child.

Conclusion

- [15] The evidence is sufficient to support the trial court’s issuance of an order for protection against Jones. We affirm.
- [16] Affirmed.

Mathias, J., and Weissmann, J., concur.