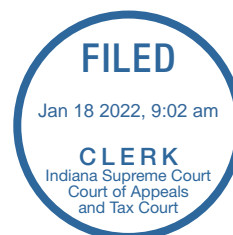


## MEMORANDUM DECISION

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

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J.S.,

*Appellant-Respondent,*

v.

L.S., D.S., and R.S.,

*Appellees-Petitioners*

January 18, 2022

Court of Appeals Case No.  
21A-PO-1241

Appeal from the  
Grant Superior Court

The Honorable  
Dana Kenworthy, Judge

Trial Court Cause Nos.  
27D02-2104-PO-83  
27D02-2105-PO-92  
27D02-2105-PO-93

**Vaidik, Judge.**

## Case Summary

- [1] J.S. (“Father”) appeals the trial court’s issuance of protective orders barring him from having contact with three of his children. We reverse and remand.

## Facts and Procedural History

- [2] Father and Ja.S. (“Mother”) are the parents of sixteen-year-old R.S., fifteen-year-old L.S., and twelve-year-old D.S. In early February 2021, there was an incident in which Father and one of his adult children violently disciplined D.S. On February 8, the Department of Child Services (DCS) received reports about that incident and other abuse and neglect by Father and Mother. That day, Father moved out of the family home. On February 12, DCS filed petitions alleging the children are children in need of services (CHINS) because of the alleged abuse. The cases were assigned to Grant Superior Court 2. An initial hearing was held on February 23, after which the trial court ordered that the children would remain in the home with Mother and that Father could not reside in the home and would have his parenting time supervised.
- [3] Also on February 23, Mother filed a petition seeking a protective order on behalf of the children against Father. She described the early February incident involving D.S. and also made other allegations of physical and verbal abuse of all three children by Father. The protective-order case was also assigned to Grant Superior Court 2. On March 1, the court issued an order denying the petition, finding Mother had not shown by a preponderance of the evidence

that domestic or family violence had occurred sufficient to justify the issuance of a protective order.

[4] Back in the CHINS cases, the children refused to visit with Father, and at some point his parenting time was suspended. Notwithstanding that development, on April 21, Mother filed another action seeking a protective order on behalf of L.S. against Father. She cited the early February incident but also several other events that occurred before February 2021, specifically, in June 2020 and January 2021. *See* Appellant's App. Vol. II pp. 22-23. The case was assigned to Grant Superior Court 2, and a hearing was set for May 11.

[5] In the meantime, on April 30, a hearing was held in the CHINS cases regarding Father's parenting time. The parties agreed, and the trial court ordered, that Father would begin therapeutic visits with the children (visits with a therapist present). Despite that agreement, on May 3, Mother filed new protective-order actions on behalf of the other two children, R.S. and D.S., making the same allegations she made in the petition relating to L.S. *See id.* at 29-30, 36-37. These two cases were also assigned to Grant Superior Court 2.

[6] A hearing was held on all three protective-order petitions on May 11. Mother acknowledged there had not been any contact between Father and the children since DCS became involved and Father moved out, but she expressed concern that the therapeutic visits ordered in the CHINS cases would be traumatic for the children. At the end of the hearing, Father's attorney argued the petitions should be denied because, among other things, Mother had already tried and

failed to get a protective order “largely based on some of the same allegations that were made in the protective order today.” Tr. p. 49. The trial court noted the possibility it was “bound” by the denial of the earlier petition, *id.* at 49-50, but it later granted the requested protective orders, barring Father from having any contact with the children for two years, until May 26, 2023.

[7] Father now appeals.

## Discussion and Decision

[8] Father contends the trial court erred by granting the protective orders. Mother has not filed a brief. When an appellee does not respond to an appeal, we will not undertake the burden of developing an argument on their behalf. *Trinity Homes, LLC v. Fang*, 848 N.E.2d 1065, 1068 (Ind. 2006). Rather, we will reverse the trial court’s judgment if the appellant’s brief presents a case of prima facie error. *Id.* In this context, “prima facie error” means error “at first sight, on first appearance, or on the face of it.” *Id.* Under that relaxed standard, we conclude that reversal is appropriate.

[9] Father argues Mother’s protective-order actions are prohibited by the claim-preclusion branch of the doctrine of res judicata. “Claim preclusion can be used to bar a successive lawsuit when ‘a particular issue is adjudicated and then put in issue in a subsequent suit on a different cause of action between the same parties or their privies.’” *In re Eq. W.*, 124 N.E.3d 1201, 1209 (Ind. 2019) (quoting *Ind. Alcohol & Tobacco Comm’n v. Spirited Sales*, 79 N.E.3d 371, 381

(Ind. 2017)). For an action to be barred by claim preclusion, four elements must be satisfied:

- (1) The former judgment must have been rendered by a court of competent jurisdiction;
- (2) The former judgment must have been rendered on the merits;
- (3) The matter now in issue was or might have been determined in the former suit; and
- (4) The controversy adjudicated in the former suit must have been between the parties to the present action or their privies.

*Id.* Father asserts these protective-order actions are barred because she filed a similar petition in February 2021 and had it denied. We agree.

[10] The February 2021 petition was denied by Grant Superior Court 2, “a court of competent jurisdiction.” The petition was denied “on the merits” in an order issued on March 1. And the controversy adjudicated there was “between the parties to the present action.” Regarding the third element—whether the “matter now in issue was or might have been determined in the former suit”—the petitions at issue here included allegations that were not included in the February 2021 petition. However, the additional allegations concerned events that occurred before the February 2021 petition was filed. As such, those allegations could have been included in the February 2021 petition. The third element of claim preclusion covers not only matters that were adjudicated in the

earlier action but also matters that “could have been” adjudicated. *Eq. W.*, 124 N.E.3d at 1211, 1212.

[11] For these reasons, we reverse the grant of Mother’s petitions and remand this matter to the trial court to vacate the protective orders. If Mother still has concerns about Father having therapeutic visits or other contact with the children, she can raise those concerns in the CHINS cases that remain pending in Grant Superior Court 2.

[12] Reversed and remanded.

Najam, J., and Weissmann, J., concur.