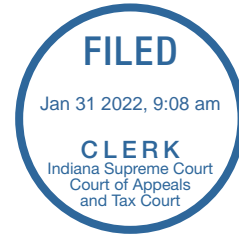


MEMORANDUM DECISION

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.



ATTORNEY FOR APPELLANT

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IN THE COURT OF APPEALS OF INDIANA

K.C.,
Appellant,

v.

B.M.,
Appellee.

January 31, 2022

Court of Appeals Case No.
21A-PO-1669

Appeal from the Jay Circuit Court

The Honorable Brian D.
Hutchison, Judge

Trial Court Cause No.
38C01-2106-PO-59

Brown, Judge.

[1] K.C. appeals the trial court's protective order. We affirm.

Facts and Procedural History

[2] On June 14, 2021, B.M. filed a Petition for an Order for Protection and Request for a Hearing in the Jay Circuit Court. The petition named K.C. as Respondent and alleged two harassment incidents.

[3] On July 1, 2021, the court held a hearing at which B.M. and K.C. appeared pro se. B.M. testified that the first incident involving K.C. occurred approximately a month earlier, and that K.C. "ran the stop sign, turned left onto [B.M.'s street] and gave [her vehicle] excessable [sic] gas." Transcript Volume II at 6. He testified that he "hollered out slow down" toward K.C.'s vehicle and that K.C. then drove around the block, "stopped right in front of [B.M.'s] house and commenced to cussing [him] out up one side and down the other and . . . [he] had a few words [he] said back." *Id.* According to B.M., K.C. and her passenger, H.S., exited the vehicle and "continued cussing . . . [and] harassing [him]" *Id.* at 7. B.M. stated that, after that first incident: "For the next week they was flying around the house, revving their motors, trying to do burn outs . . . [and] harassing me and the neighbors." *Id.* B.M. testified that, on June 13, 2021, he was at a Village Pantry filling his truck with gas with his daughter, K.M., when K.C. "pulled in and parked up by the building," and that after K.C. had emerged from the Village Pantry, she saw B.M. and "pull[ed] around and park[ed] right beside [his] truck while [he was] pumping gas and washing [his] windshield." *Id.* B.M. stated he told K.C.: "I'm not a person you want to mess with. You need to leave me alone. Go away and leave me

alone.” *Id.* According to B.M., K.C. exited her vehicle and “[got] in [his] face and it’s [sic] berating [him],” after which B.M. called the police. *Id.* B.M. stated that, after the incident at Village Pantry, K.C. “slandered [him] on Facebook.” *Id.* at 9. B.M. then testified that he had continuing concerns:

I have anxiety. If she continues this the anxiety is going to win sooner or later and I do not want it to because it won’t end up pretty I’m not scared of this person. I’m scared . . . this person will . . . continue harassing me and push me into doing that [which] I do not want to do.

Id.

[4] A.S., B.M.’s neighbor, testified concerning the events she witnessed during the first interaction between B.M. and K.C. in front of B.M.’s house. A.S. testified that K.C. had run the stop sign and used a “considerable amount of gas,” B.M. told them to slow down, “and they came back around the block and [asked] what did you say . . . [and] started an altercation from there.” *Id.* at 12. A.S. indicated that she did not hear the exact words used because she was in her car in her driveway. She agreed that the occupants of K.C.’s car exited the car and approached B.M. during the interaction. About other incidents, she stated that K.C. “did follow him to the gas station and . . . a picture was posted . . . on Facebook and they have come by, just like he said, multiple times within the next week . . . [t]rying to do burnouts.” *Id.* at 12-13.

[5] K.M., B.M.’s daughter, testified that, during the first incident in front of B.M.’s house, she exited the house upon hearing screaming and yelling and saw K.C. and H.S. “were talking to somebody on the phone . . . [and] they wanted to find

out [B.M.'s] job and what he did at the courthouse and they were calling him names and basically tried to stir up a fight with [her]." *Id.* at 15. According to K.M., a "couple days later they were driving . . . and yelling stuff out the car window and driving back and forth . . ." *Id.* K.M. testified about the incident occurring at Village Pantry and stated that K.C. "pulled around the side of the car and approached the passenger side and . . . said something about . . .

[having] stopped by [B.M.'s] work today . . . [and] something along the lines of if you touch me I'll shoot you . . . [and] refused to leave him alone . . ." *Id.* at 16.

[6] K.C. testified that, while in her Dodge Challenger with H.S., they drove by B.M.'s house, and "someone said something . . . so we came back around and see what he wanted . . ." *Id.* at 18. She stated that she had said: "sir I'm not speeding I was looking down at my speedometer." *Id.* She denied running a stop sign, revving her engine, or doing burnouts, and she testified that B.M. was "yelling at people on the road and . . . he tried to sic his daughter on my friend [H.S.] and he was making threats to me . . . [and] I didn't get on his property but [was] caught between a property and my car so nothing happens." *Id.* at 18-19. K.C. testified that B.M. had threatened her at the Village Pantry, "he was actually walking up to [her] car from the gas pump," and he had "threaten[ed] [her] multiple times" over the course of their interactions. *Id.* at 19.

[7] On July 1, 2021, the court entered an Order for Protection finding that K.C. "represents a credible threat to the safety of [B.M.] or a member of [B.M.'s] household," K.C. "had notice and an opportunity to be heard," and B.M. had

shown “by a preponderance of the evidence, that . . . repeated acts of harassment ha[d] occurred sufficient to justify the issuance of this Order.” Appellant’s Appendix Volume II at 28. The order enjoined K.C. from threatening to commit or committing acts of harassment against B.M., prohibited her from directly or indirectly communicating with B.M., and ordered her to stay away from B.M.’s residence.

Discussion

- [8] Before addressing K.C.’s arguments, we note that B.M. did not file an appellee’s brief. When an appellee fails to submit a brief, we do not undertake the burden of developing arguments, and we apply a less stringent standard of review, that is, we may reverse if the appellant establishes prima facie error. *Zoller v. Zoller*, 858 N.E.2d 124, 126 (Ind. Ct. App. 2006). This rule was established so that we might be relieved of the burden of controverting the arguments advanced in favor of reversal where that burden properly rests with the appellee. *Wright v. Wright*, 782 N.E.2d 363, 366 (Ind. Ct. App. 2002).
- [9] K.C. asserts that there was insufficient evidence for the trial court to issue the protective order. She argues that the events do not constitute repeated or impermissible contact that would cause a person to suffer emotional distress, she was not sufficiently “identified” to have harassed B.M., and the evidence failed to establish who was driving. Appellant’s Brief at 11.
- [10] Indiana’s Civil Protection Order Act has the express purpose of promoting 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. Ind. Code § 34-26-5-2(b) provides that “[a] person who is or has been subjected to harassment may file a petition for an order for protection against a person who has committed repeated acts of harassment against the petitioner.” Ind. Code § 34-6-2-51.5 defines harassment for purposes of Ind. Code §§ 34-26-5 as “conduct directed toward a victim that includes, but is not limited to, repeated or continuing impermissible contact: (1) that would cause a reasonable person to suffer emotional distress; and (2) that actually causes the victim to suffer emotional distress.” It also provides that harassment “does not include statutorily or constitutionally protected activity, such as lawful picketing pursuant to labor disputes or lawful employer-related activities pursuant to labor disputes.” Ind. Code § 34-6-2-51.5(b).

[11] Ind. Code § 34-26-5-9(g) provides that “[a] finding that domestic or family violence or harassment 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” and that, “[u]pon a showing of domestic or family violence or harassment 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.”

[12] “Under our traditional two-tiered standard of review, *see* Ind. Trial Rule 52(A), we ask whether the evidence supports the trial court’s findings and whether its

findings support the judgment.” *S.H. v. D.W.*, 139 N.E.3d 214, 220-221 (Ind. 2020). 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. *Fox v. Bonam*, 45 N.E.3d 794, 798 (Ind. Ct. App. 2015); *Mysliwy v. Mysliwy*, 953 N.E.2d 1072, 1076 (Ind. Ct. App. 2011), *trans. denied*. We do not reweigh evidence or reassess witness credibility, and we consider only the evidence favorable to the trial court’s order. *Fox*, 45 N.E.3d at 798.

[13] The record reveals B.M. testified that he and his daughter were harassed outside of his home by K.C., K.C. later drove by his house, there was a subsequent confrontation outside of a Village Pantry, and there was a Facebook post that described B.M. negatively. B.M. stated that he was concerned about the incidents and the anxiety they induced. A.S. testified that during the first incident, after B.M. told them to slow down, K.C. and H.S. “came back around the block and . . . started an altercation from there.” Transcript Volume II at 12. K.M. testified that, during the week after the first incident, K.C. returned to the street outside of B.M.’s house and made noise and that, at the Village Pantry, K.C. approached B.M. and said that she had visited his work, would shoot him if he touched her, and refused to leave him alone.

[14] Based upon the record, we conclude that B.M. presented evidence of probative value to establish by a preponderance of the evidence that K.C.’s conduct directed at him consisted of repeated or continuing impermissible contact that would cause a reasonable person to suffer emotional distress and actually

caused B.M. to suffer emotional distress, which supported the issuance of the protective order.

[15] For the foregoing reasons, we affirm the trial court's order.

[16] Affirmed.

May, J., and Pyle, J., concur