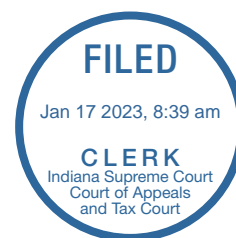


MEMORANDUM DECISION

Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as binding precedent, but it may be cited for persuasive value or to establish res judicata, collateral estoppel, or law of the case.



ATTORNEY FOR APPELLANT

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IN THE COURT OF APPEALS OF INDIANA

J.J.G.,

Appellant-Respondent,

v.

M.R.G.,

by C.S.V., Child's Next Friend,

Appellee-Petitioner

January 17, 2023

Court of Appeals Case No.
22A-PO-1900

Appeal from the
Elkhart Superior Court

The Honorable
Christopher J. Spataro, Judge

Trial Court Cause No.
20D05-2205-PO-420

Vaidik, Judge.

Case Summary

- [1] J.J.G. appeals the trial court's issuance of a protective order against him, arguing the evidence is insufficient to support it. We agree and therefore reverse.

Facts and Procedural History

- [2] C.S.V. is the mother of M.R.G., who was born in 2005. J.J.G. met C.S.V. when M.R.G. was around fifteen months old. J.J.G. and C.S.V. married when M.R.G. was around nine or ten years old, and they lived in Michigan.¹ They also had a child together, M. J.J.G. and C.S.V. divorced in Michigan in August 2020. J.J.G. remained in Michigan, and C.S.V. and the children moved about four-and-a-half hours away to Bristol, Indiana, in June or July 2020. J.J.G. has parenting time with M., but he doesn't go to Bristol to exchange M. Instead, his current wife meets C.S.V. at a half-way point to exchange M. The last time J.J.G. saw M.R.G. was in late 2020 or early 2021.

- [3] In May 2022, C.S.V., on behalf of M.R.G., petitioned for a protective order against J.J.G. The trial court entered an ex parte protective order and scheduled a hearing for July. At the hearing, C.S.V. testified that in 2015 J.J.G., in the presence of M.R.G., threw their family dog across the room because he was

¹ C.S.V. and M.R.G. referred to J.J.G. as M.R.G.'s stepfather, but they also testified that J.J.G. adopted M.R.G.

upset the dog peed on the floor. C.S.V. also testified that in 2020 J.J.G., in the presence of M.R.G., yelled at her through her car window and wouldn't let her leave.

[4] M.R.G. testified that when she was fourteen years old J.J.G. approached her and her boyfriend at the mall, yelled at them for holding hands, and put his hand at his side, where he carried his gun. M.R.G. also testified that starting around the age of seven or eight and continuing until she was fourteen, J.J.G. would “get into . . . bed with [her] in the morning” and grab her arm if she got out of bed. Tr. p. 28. M.R.G. said she is “scared” of J.J.G. because he is a truck driver and could “show up” where she worked. *Id.* at 26. M.R.G. acknowledged that J.J.G. hadn't contacted her but said he had “tried” through her mother. *Id.* J.J.G. testified and denied the allegations.

[5] The trial court later issued a protective order, which provides in relevant part:

f. The Respondent represents a credible threat to the safety of the Petitioner or a member of the Petitioner's household.

g. The Petitioner has shown, by a preponderance of the evidence, that domestic or family violence, a sex offense, or repeated acts of harassment has occurred sufficient to justify the issuance of this Order.

Appellant's App. Vol. II p. 8. The order, which expires in July 2024, prohibits J.J.G. from “harassing, annoying, telephoning, contacting, or directly or indirectly communicating with the Petitioner” and orders him to “stay away

from the residence, school, and/or place of employment of the Petitioner.” *Id.* at 9.

[6] J.J.G. now appeals.

Discussion and Decision

[7] We first note that C.S.V. and M.R.G. have 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.*

[8] J.J.G. 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.*

[9] A parent may petition for an order of protection on behalf of a child against a “family or household member who commits an act of domestic or family violence.” Ind. Code § 34-26-5-2(c)(1); *see also* I.C. § 34-6-2-44.8 (defining “family or household member”). “Domestic or family violence” means:

(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.

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(h). As our Supreme Court has emphasized, there must be “reasonable grounds to believe that the respondent **presently** intends to harm the petitioner or the petitioner’s family” 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); *see also id.* at 219 (“Thus, the respondent must pose a threat to a protected person’s safety **when the petitioner seeks relief.**” (emphasis added)). The requirement of a present threat contemplates that “the parties’ relationship can change over time.” *Id.* at 220. If the petitioner meets this burden, “the court shall grant relief necessary to bring about a cessation of the violence or the threat of violence.” I.C. § 34-26-5-9(h).

[10] Here, the evidence does not show a present threat to M.R.G. C.S.V. and M.R.G. sought the protective order in May 2022. The events they testified about occurred in 2015, 2019, and 2020—before J.J.G. and C.S.V. divorced. J.J.G. hasn't seen M.R.G. since late 2020 or early 2021, and J.J.G. hasn't contacted M.R.G. Moreover, J.J.G. lives four-and-a-half hours away from M.R.G. Although J.J.G. exercises parenting time with M., he is not involved in the exchanges and doesn't travel to Bristol. We therefore find that the evidence is insufficient to support the trial court's issuance of the protective order based on domestic or family violence.

[11] Reversed.

Riley, J., and Bailey, J., concur.