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IN THE
COURT OF APPEALS OF INDIANA

P.D.,

Appellant-Respondent,

v.

D.V.,

Appellee-Petitioner.

May 26, 2021

Court of Appeals Case No. 20A-PO-1860

Appeal from the Tippecanoe Superior Court

The Honorable Kristen E. McVey, Judge

Trial Court Cause No. 79D05-1912-PO-644

Riley, Judge.

STATEMENT OF THE CASE

[1] Appellant-Respondent, P.D., appeals the trial court's grant of a protective order in favor of Appellee-Petitioner, D.V.

[2] We affirm.

ISSUE

[3] P.D. presents this court with one issue, which we restate as: Whether the trial court's grant of a protective order in favor of D.V. was supported by the evidence.

FACTS AND PROCEDURAL HISTORY

[4] Prior to the events at the root of this case, D.V. and P.D. did not know each other or have any contact. D.V. is a political activist who formerly served in the Navy and the Naval Reserve. During 2019, D.V. organized and sold tickets for a political gala. Jenny Erickson (Erickson) purchased a table for the gala and sold one ticket to the table to P.D. The date for the gala was changed several times, and the gala was eventually cancelled.

[5] In July 2019, P.D. contacted D.V. for a refund of her ticket. The initial direct communications between P.D. and D.V. were pointed but did not stray from the topic of the refund. However, P.D. became upset about the delay in receiving her refund and subsequently used social media accounts and hashtags dedicated to D.V. to discuss D.V. with other social media users, describing D.V. in derogatory terms such as liar, "scam artist", and "pathological." (Exh.

Vol. pp. 25, 28, 59). In these social media posts, P.V. accused D.V. of faking her military service and her PTSD diagnosis. P.D. created a private Facebook page entitled "victims of [D.V]." (Transcript p. 21). Although she denied creating the hashtag #victimsof[D.V], P.D. tweeted a response to another Twitter user, "Yes, we are the real #victimsof[D.V.]. LOL" (Exh. Vol. p. 15). D.V. eventually refunded Erickson, who refunded P.D.

[6] After P.D. received her refund, she continued to engage in social media activity related to D.V. Although she denied creating the account, P.D. tagged the Twitter account @[D.V.]scam after receiving her refund. P.D. sent a Facebook message to D.V.'s ex-husband inquiring if he had been married to D.V. and stating that she was reaching out to "discuss a few things with you" because "we are in a tough situation[.]" (Exh. Vol. p. 20). P.D. contacted D.V.'s adult son in Ohio, and she contacted ten speakers she believed were booked to speak at other events planned by D.V. to repeat the accusations she made in her social media posts that D.V. was a scammer who had faked her military service. On November 25, 2019, P.D. tweeted a screenshot of D.V. and her husband's shared Twitter account cover page which included an image of the gravestones of D.V.'s husband's deceased children. P.D. tagged the tweet to thirty-seven people stating, "Please get the word out." (Exh. Vol. p. 41). In conjunction with this tweet, P.D. also tweeted "she has decide[d] to harass everyone now L-O-L[.]" (Tr. p. 49).

[7] D.V. hired an attorney to send P.D. a cease-and-desist letter. Attached to the letter was a copy of D.V.'s Naval Reserve discharge summary which included

D.V.'s home address. This document with D.V.'s home address was subsequently posted on the internet. P.D. stopped posting about D.V. while D.V. was represented by counsel but started again when D.V.'s lawyer was no longer on the case.

[8] On December 12, 2019, D.V. filed a petition for a protective order, and the next day, the trial court granted her an *ex parte* order. On June 9, 2020, and July 10, 2020, at P.D.'s request, the trial court held evidentiary hearings. At the July 10 hearing, P.D. related that in November 2019 after she had received her refund, she had filed a complaint with the Office of the Indiana Attorney General about D.V. and her event company.

[9] D.V. testified that P.D. recruited so many people to call her that she had to change her phone number and that, in addition to contacting family members and event speakers, P.D. had contacted her former employers. Concerning the totality of P.D.'s conduct, D.V. related that she felt "stressful" and "frightened" because "I didn't know her and everywhere I turned she was there. Trying to sabotage everything that I was doing." (Tr. p. 118). D.V. was frightened by the tone of P.D.'s posts, such as when she posted "LOL" with the gravestones Twitter page image, because it seemed vicious and she had tagged up to forty people at a time. (Tr. p. 119). D.V. felt "desperate," "tired," and "scared" when she filed for the protective order. (Tr. p. 120). D.V. was afraid to get out of bed at night to take her dogs out because her address and phone number had been made public. D.V. stated that "[P.D.] took a picture of my husband's deceased children and thinks it's funny. She contacted my son. This has went

[sic] beyond politics. This is about my life. She put my life in danger." (Tr. p. 120).

[10] On July 13, 2020, the trial court entered a protective order against P.D. in favor of D.V. to be effective until December 13, 2021. On August 13, 2020, P.D. filed a motion to correct error. On September 8, 2020, the trial court entered its findings of fact and conclusions of law denying P.D.'s motion, concluding that P.D. had stalked D.V. The trial court further concluded that P.D. continued to pose a current and credible threat to D.V. The trial court entered the following relevant findings of fact and conclusions thereon:

> 14. P.D. posted screen shots of D.V.'s husband's [T]witter page which included a photo of the gravestone of his deceased child [sic]. The manner in which P.D. made the post would cause any reasonable person and did cause D.V. to feel emotional distress and fear.
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> 15. The language and tone of P.D.'s communications and posts [were] not limited to dissatisfaction or anger about the disputed refund but went on to accuse D.V. of faking her military service record, use of the words "liar" and "crook" and to suggest, without any evidence, that D.V.'s attorney had ceased representing her because she is a "fraud." P.D. continued to make posts and communicate with the others to accuse D.V. of faking her military service even after having been served with a cease and desist letter and proof of D.V.'s military service record.
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> 16. P.D. further contacted D.V.'s adult son and her ex-husband to intimidate and cause distress.
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> * * * *

> 19. P.D. exceeded the use of protected speech when she contacted intended speakers at D.V.'s other events to inquire as to the status of any contracts they may have or not have had with D.V. and the way in which P.D. would portray D.V. to these individuals to attempt to interfere with any contractual relationship between the two. P.D.'s pattern of conduct went beyond protected speech to include behavior and words that strongly resemble, and may in-fact be slander, defamation, intentional infliction of emotional distress and tortious interference.
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> 20. Most significantly, P.D.'s post of D.V.'s husband's [T]witter page, and her communications to D.V.'s ex-husband and son went beyond any protected speech and can only be interpreted as intended to intrude on D.V.'s family in a personal manner and to cause her emotional distress or fear.

(Appellant's App. Vol. II, pp. 38-39) (the parties' initials substituted throughout). The trial court found that P.D.'s report to the Office of the Indiana Attorney General and other portions of her communications with D.V. and with others were constitutionally-protected speech which the trial court specified it did not consider in making its determination.

[11] P.D. now appeals. Additional facts will be provided as necessary.

DISCUSSION AND DECISION

I. *Standard of Review*

[12] Protective orders are similar to injunctions, and, therefore, a trial court must *sua sponte* make special findings of fact and conclusions thereon. *Fox v. Bonam*, 45 N.E.3d 794, 798 (Ind. Ct. App. 2015). Both parties rely upon the findings of

fact and conclusions thereon contained in the trial court's order denying P.D.'s motion to correct error, and, given that they are more extensive than those entered to support the permanent protective order, we will concentrate our analysis there. Our standard of review of the trial court's findings and conclusions is two-tiered: we first determine whether the evidence supports the findings and then whether the findings support the protective order. *Id.* In deference to the trial court's proximity to the issues and the witnesses, we will only reverse where there is no evidence supporting the findings or the findings fail to support the order. *Id.* In addition, we do not reweigh the evidence or reassess the credibility of the witnesses. *Id.* The appellant bears the burden of establishing that the trial court's findings are clearly erroneous. *Id.*

II. *Analysis*

[13] D.V. petitioned for relief under the Indiana Civil Protection Order Act (CPOA), which exists to promote the protection and safety of all victims of domestic or family violence and harassment in a fair, prompt, and effective manner. *See* Ind. Code § 34-26-5-1(1-2). For the purposes of the CPOA, "domestic or family violence" includes stalking as defined by Indiana Code section 35-45-10-1, whether or not the stalking is committed by a household or family member. I.C. § 34-6-2-34.5 (2019). "Because of the potentially severe limitations on a restrained person's liberty, the petitioner must prove the respondent is a present, credible threat to the petitioner or someone in the petitioner's household." *S.H. v. D.W.*, 139 N.E.3d 214, 217 (Ind. 2020). The threat posed by the respondent is viewed objectively, and the threat must be credible, meaning plausible or

believable. *Id*. at 220. Thus, the petitioner must prove, by a preponderance of the evidence, that there are reasonable grounds to believe that the respondent presently intends to harm the petitioner or the petitioner's family. *Id.*

[14] D.V.'s petition alleged stalking by P.D., and the trial court determined that P.D. had stalked D.V. For purposes of the CPOA, "stalking" is defined as

> a knowing or an intentional course of conduct involving repeated or continuing harassment of another person that would cause a reasonable person to feel terrorized, frightened, intimidated, or threatened and that actually causes the victim to feel terrorized, frightened, intimidated, or threatened. The term does not include statutorily or constitutionally protected activity.

I.C. § 35-45-10-1. "Harassment," for purposes of the CPOA, means "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." I.C. § 34-6-2-51.5. "Impermissible contact" includes, but is not limited to, communicating with the person through electronic means and posting on social media, if the post is directed to the victim or refers to the victim, directly or indirectly. I.C. § 35-45-10-3(a)(3).

[15] Here, after engaging in a dispute about a ticket refund with D.V., P.D. contacted D.V.'s ex-husband via Facebook messenger to discuss D.V. There is no evidence in the record that D.V.'s ex-husband had anything to do with D.V.'s event business, which supported the trial court's reasonable conclusion that P.D.'s contact with the ex-husband was nothing more than an attempt by

P.D. to "intimidate and cause distress" to D.V. (Appellant's App. Vol. II, p. 38). Unlike the facts of *S.H. v. D.W.*, 139 N.E.3d at 221, wherein our supreme court rejected D.W.'s argument that communications by S.H.'s relatives to her about finding children's toys could not support the extension of a protective order, here, P.D. was the one initiating the communication with D.V.'s ex-husband, and the communication was explicitly about D.V. On a separate occasion, P.D. tweeted an image of D.V.'s Twitter cover page that she shared with her husband which included images of the gravestones of D.V.'s husband's deceased children. In conjunction with these images, P.D. tweeted, "she has decide[d] to harass everyone now L-O-L" and "Please get the word out." (Tr. p. 49; Exh. Vol. p. 41). This social media post comprises one of the statutorily-enumerated definitions of an "impermissible contact" because D.V.'s name appeared in the post and, thus, it directly referred to the victim. *See* I.C. § 35-45-10-3(a)(3). These actions alone constituted "a knowing or an intentional course of conduct involving repeated or continuing harassment" sufficient to constitute stalking. *See Mauer v. Cobb-Mauer*, 994 N.E.2d 753, 757 (Ind. Ct. App. 2013) (observing that "[u]nder Indiana's anti-stalking law, the term "repeated" means that the impermissible contact occurs more than once.").

[16] Moreover, the trial court's conclusion that a reasonable person would feel at least threatened or intimidated by P.D.'s actions was supported by the evidence because these intrusions into D.V.'s personal life went far beyond the scope of the limited, business-related contact that had occurred directly between the parties. The flippant words that P.D. attached to her November 25, 2019, tweet

of the image of the D.V.'s Twitter cover page and the gravestones, along with the call to others to spread them, would also cause a reasonable person to feel threatened or intimidated, as a person who feels comfortable with making light of dead children and using those images for tactical purposes demonstrates limited restraint and a willingness to be ruthless. In addition, D.V. testified that P.D.'s actions did, in fact, frighten and scare her because P.D. appeared to be vicious. In light of these facts, the trial court's determination that P.D. stalked D.V. was supported by evidence in the record, and we conclude that it was not clearly erroneous. *See Fox*, 45 N.E.3d at 798.

[17] Nevertheless, P.D. argues that there was insufficient evidence that she harassed or stalked D.V. because she simply requested a refund from D.V., an act which would not cause a reasonable person to fear, and which did not cause D.V. to be afraid. This argument is not persuasive because it ignores all the other evidence in the record of her conduct apart from her initial, direct communication with D.V. P.D. also contends that there was no evidence to support the trial court's finding that she used social media and language "'to rally and incite others to harass or stalk [D.V.] and to interfere with [D.V.'s] events and/or business relationships.'" (Appellant's Br. p. 9). Again, P.D. ignores her own November 25, 2019, tweet in which she tagged almost forty other accounts and urged them to "Please get the word out," which was reasonably interpreted by the trial court as incitement to harass D.V. (Exh. Vol. p. 41). P.D. further argues that the trial court improperly focused on her interference with D.V.'s business relationships and held her responsible for the

conduct of others. However, even if that were true, we have concluded that the evidence supported the issuing of the protective order without any consideration of the trial court's findings pertaining to P.D.'s interference with D.V.'s business or any conduct by anyone but P.D.

[18] Lastly, P.D. briefly argues that her conduct in requesting a refund, writing "on Twitter and Facebook that [D.V.] failed to issue her refund," and filing a complaint with the Office of the Indiana Attorney General constituted constitutionally-protected commercial speech. (Appellant's Br. p. 10). She also argues that the protective order violated Indiana's anti-SLAPP statute which seeks to reduce the number of lawsuits directed at chilling the exercise of free speech or the petition for the redress of grievances. *Brandom v. Coupled Products, LLC*, 975 N.E.2d 382, 385 (Ind. Ct. App. 2012); *see also* I.C. § 34-7-7-7, *et seq*. We do not address P.D.'s arguments any further than to note that they suffer from the same defects as her other appellate arguments in that they concentrate on her initial, direct contact with D.V. and ignore her subsequent conduct which we have concluded constituted stalking. P.D. does not explain, or cite any precedent for, her apparent proposition that contacting D.V.'s ex-husband and posting her November 25, 2019, tweet of deceased children's gravestones had any relevance to her request for a refund or constituted valid commercial speech. What is more, even if we were to assume, without deciding, that the anti-SLAPP statute applies to a protective order proceeding, P.D. cites the law pertinent to the appellate review of an anti-SLAPP motion to dismiss, but she

never moved the trial court to dismiss the protective order. Accordingly, we do not disturb the trial court's entry of the protective order in favor of D.V.

CONCLUSION

[19] Based on the foregoing, we conclude that the trial court's determination that P.D. stalked D.V. was supported by the evidence and was sufficient to issue the protective order.

[20] Affirmed.

[21] Mathias, J. and Crone, J. concur