MEMORANDUM DECISION

APPELLANTS PRO SE

A.P.
C.P.
Rockledge, Florida

IN THE COURT OF APPEALS OF INDIANA

A.P. and C.P.,

Appellants-Respondents,

v.

A.S.,

Appellee-Petitioner,

February 18, 2021

Court of Appeals Case No. 20A-PO-1486

Appeal from the Martin Circuit Court

The Honorable Lynne E. Ellis, Judge

Trial Court Cause Nos. 51C01-2004-PO-67 51C01-2004-PO-68

Robb, Judge.

Case Summary and Issues

[1] A.P. and C.P., pro se, appeal the trial court's issuance of orders for protection in favor of A.S. A.P. and C.P. raise multiple issues, which we restate as: (1) whether sufficient evidence supports the trial court's orders; and (2) whether the trial court failed to provide A.P. and C.P. with an adequate hearing.[1] Concluding that there was sufficient evidence and that the hearing was adequate, we affirm.

Facts and Procedural History

[2] A.S. and C.P. were once married and had two children together. C.P. is currently married to A.P., who has legally adopted the children. A.P. and C.P. live in Florida and A.S. lives in Indiana. On May 14, 2020, A.S. obtained ex parte Orders for Protection against A.P. and C.P. A.S. claimed, in part, that A.P. and C.P. "committed repeated acts of harassment against [her;] . . . threatened to cause physical harm to [her]; . . . placed [her] in fear of physical

[1] A.P. and C.P. brought a third claim alleging bias and prejudice on the part of the trial court wherein they cite multiple Indiana Rules of Judicial Conduct in support; however, the Indiana Supreme Court has exclusive jurisdiction over alleged violations of the Code of Judicial Conduct. *In Re Guardianship of Hickman,* 805 N.E.2d 808, 814-15 (Ind. Ct. App. 2004), *trans. denied.* Therefore, we cannot determine whether the trial judge violated a Judicial Canon because it is not a proper consideration for this Court. *Id.* at 815; *see also Shepherd v. Truex*, 819 N.E.2d 457, 463 (Ind. Ct. App. 2004). However, the trial court could have avoided much of this appeal had it taken the case under advisement and read the exhibits presented. To simply refuse to do so makes the decision appear arbitrary and undermines confidence in the judicial system.

harm; . . . [and] committed stalking against [her].” Appellant’s Appendix, Volume 1 at 17-18, 27-28.[2]

[3] On July 8, 2020, the trial court held a consolidated evidentiary hearing on the requests for orders for protection.[3] During the hearing, the trial court asked all parties whether “there [was] a need for [them] to contact each other at all?” Transcript of Evidence, Volume 2 at 4. All parties answered that there was no need for them to be in communication as A.S. and C.P. no longer shared children. Further, the trial court asked both A.P. and C.P. whether they had posted about A.S. on Facebook and both admitted they had and that there was no reason to be doing so.

[4] A.P. and C.P. submitted sixty-one exhibits of Facebook posts and text messages which the trial court did not read at the hearing. However, the following exchange took place:

> [Trial Court]: [A.P.] . . . why did you send 61 exhibits?
>
> [A.P.]: Because in the initial order that [A.S.] sent, 90 percent of it is lies.
>
> [Trial Court]: So? I’m not paying attention to those. Did you post about her on Facebook?

---

[2] Citations to Appellant’s Appendix are based on .pdf pagination.

[3] Due to the COVID-19 pandemic, the evidentiary hearing took place via the Zoom Meeting platform. *See* Transcript of Evidence, Volume 2 at 3.

[A.P.]: I have, yes.

[Trial Court]: Then you don't need to be doing that. You had no business posting anything about her. Wouldn't you agree?

[A.P.]: Yes, ma'am.

Id. at 6.

[5] Following the hearing, the trial court issued its orders, stating that the "Ex Parte Order[s] For Protection shall remain in place." Appellant's App., Vol. 1 at 48. The trial court further ordered that "[A.P. and C.P.] shall not make any posts or comments in regards to [A.S.] on any social media[,]" and "[A.S.]'s family members shall not contact [A.P. and C.P.]." *Id.* A.P. and C.P. now appeal.[4]

Discussion and Decision

I. Standard of Review

[6] We begin by acknowledging that A.P. and C.P. proceed pro se. It is well-established that "a pro se litigant is held to the same standards as a trained attorney and is afforded no inherent leniency simply by virtue of being self-represented." *Zavodnik v. Harper*, 17 N.E.3d 259, 266 (Ind. 2014).

[4] A.S. filed separate petitions as to A.P. and C.P. and each was given its own cause number, but the cases were consolidated for hearing in the trial court and pursuant to Indiana Appellate Rule 38(A), remain consolidated on appeal.

[7] Next, we note that A.S. has not filed an appellee's brief, and we will not undertake the burden of developing arguments for her. *Jenkins v. Jenkins*, 17 N.E.3d 350, 351 (Ind. Ct. App. 2014). Instead, we apply a less stringent standard of review and will reverse upon a showing of prima facie error, which is error "at first sight, on first appearance, or on the face of it." *Orlich v. Orlich*, 859 N.E.2d 671, 673 (Ind. Ct. App. 2006). However, in determining whether reversal is required, we are still obligated to correctly apply the law to the facts in the record. *Jenkins,* 17 N.E.3d at 352.

II. Sufficiency of Evidence

[8] A.P. and C.P. raise the issue of whether sufficient evidence supports the trial court's orders for protection.[5] A trial court has discretion to grant protective relief pursuant to the Civil Protective Order Act ("CPOA"), and we neither reweigh the evidence nor judge the credibility of the witnesses when assessing the sufficiency of the evidence. *Costello v. Zollman,* 51 N.E.3d 361, 367 (Ind. Ct.

[5] The dissent argues that the trial court erred by issuing an ex parte order without notice and a hearing because harassment was alleged by A.S. *See* Ind. Code § 34-26-5-9(b). However, the trial court may issue an ex parte order prior to holding a hearing if "it appears from a petition . . . that domestic violence or family violence" has occurred. *See* Ind. Code § 34-26-5-9(a). We have previously stated that "For purposes of the CPOA, domestic and family violence also includes stalking. *Andrew v. Ivie*, 956 N.E.2d 720, 723 (Ind. Ct. App. 2011). In A.S.'s petition against A.P. she alleged stalking and harassment, Appellant's App., Vol. 1 at 26, and in her petition against C.P. she alleged domestic or family violence, stalking and harassment, *id.* at 16. We also note that A.P. and C.P. do not challenge the trial court's issuance of the ex parte order prior to a hearing, they do not even provide the ex parte orders in the appendix. Thus, we limit our review to the continuation of the order and the evidentiary hearing granted to A.P. and C.P.

App. 2016), *trans. denied.* "We consider only the evidence of probative value and reasonable inferences that support the judgment." *Id.*

[9] The CPOA and similar statutes are meant "to prohibit actions and behavior that cross the lines of civility and safety in the workplace, at home, and in the community." *Torres v. Ind. Family & Soc. Servs. Admin.*, 905 N.E.2d 24, 30 (Ind. Ct. App. 2009). We construe the CPOA, in part, to promote the "protection and safety of all victims of harassment in a fair, prompt, and effective manner[.]" Ind. Code § 34-26-5-1(2). The petitioner for an order for protection bears the burden of proof and must prove entitlement to the order by a preponderance of the evidence. *Costello,* 51 N.E.3d at 367.

[10] Under Indiana Code section 34-26-5-2(b), "[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." Harassment is defined in the criminal statute defining stalking as conduct "directed toward a victim that includes but is not limited to repeated or continuing impermissible contact that would cause a reasonable person to suffer emotional distress and that actually causes the victim to suffer emotional distress." Ind. Code § 35-45-10-2; *see R.W. v. J.W.,* 160 N.E.3d 195, 203 (Ind. Ct. App. 2020) (evaluating Indiana Code section 34-26-5-2(b) by applying the definition of harassment from Indiana Code section 35-45-10-2). Further, communicating in person, in writing, by telephone, or through electronic means, or posting on social media can constitute impermissible contact. Ind. Code § 35-45-10-3.

[11] A.P. and C.P. argue that A.S. did not show by the preponderance of evidence that harassment occurred. Further, A.P. and C.P. allege that the exhibits presented to the trial court included "text messages to and from A.S., showing that the conversation was civil[.]" Brief of Appellants at 7.

[12] However, at the evidentiary hearing, both A.P. and C.P. admitted to posting about A.S. on Facebook and agreed that there was no reason to be posting anything about A.S. *See* Tr., Vol. 2 at 5. Specifically, A.P. conceded that she "had no business posting anything about her." *Id.* at 6. The trial court concluded that A.P. and C.P. "have no reason to be communicating with . . . or about [A.S.] . . . [and A.S.] has no reason to be communicating with . . . or about [A.P. and C.P.]." *Id.* at 7. Further, the evidence submitted by A.P. and C.P. that was not read by the trial court would not have impacted the outcome of the proceeding. While there are instances of civil dialogue submitted by A.P. and C.P., their designation also includes long Facebook rants about A.S., Appellant's App., Vol 1. at 75-76, and condescending Facebook direct messages that mention jail time for A.S., *id.* at 100, 110, 113-14. Thus, A.P. and C.P. placed nothing in front of the court that if read would have changed the result.

[13] A.P. and C.P. essentially ask us to reweigh the evidence which we will not do. *Costello,* 51 N.E.3d at 367. Although we do not reweigh the evidence it is our opinion that the sheer abundance of messages, to and regarding A.S., are themselves evidence of and support for the finding of harassment. And here, because A.P. and C.P. admitted to posting about A.S. unnecessarily, there was sufficient evidence that A.P. and C.P. committed repeated acts of harassment

against A.S. such that the trial court could order them to stop making "any posts or comments in regards to [A.S.] on any social media." Appellant's App., Vol. 1 at 48.[6]

III. Adequacy of Hearing

[14] Generally, a trial court has discretion to grant protective relief according to the terms of the CPOA. *See* Ind. Code § 34-26-5-9. The CPOA is construed, in part, to promote the "protection and safety of all victims of harassment in a fair, prompt, and effective manner[,]" and the "prevention of future . . . harassment." Ind. Code § 34-26-5-1(2), (3). Under Indiana Code section 34-26-5-9(a)(2), a trial court may, "upon notice and after a hearing, whether or not a respondent appears, issue or modify an order for protection."

[15] A.P. and C.P. argue that their right to a fair hearing was violated because the trial court extended the orders of protection "without allowing evidence and witness testimony to be heard." Br. of Appellants at 9. The dissent agrees with A.P. and C.P.'s contention. We do not.

[16] We have previously held that "when the legislature provided for hearings under CPOA, it intended that the petitioner, and the respondent if present, be permitted to call witnesses at those hearings." *Essany v. Bower*, 790 N.E.2d 148, 152 (Ind. Ct. App. 2003) (footnote omitted). *Essany* is the original case

---

[6] Because there is sufficient evidence of harassment, we do not address any claim of stalking or family violence under Indiana Code section 34-26-5-2.

determining what constitutes a hearing under the CPOA. In *Essany*, we held that the trial court erred when it did not permit the petitioner to testify or cross-examine the respondent before dismissing a petition for an order for protection. *Id.* at 153. Subsequent cases have expanded *Essany* to include the presentation of evidence. *See N.E. v. L.W.*, N.E. 3d 102, 107 (Ind. Ct. App. 2019) (holding "[i]n light of our holding in *Essany*, we conclude that the . . . hearing did not meet the minimum requirements of [Ind. Code § 34-26-5-9] and that the trial court erred when it did not allow Wife to testify, present evidence, and call witnesses before denying her petition."). However, as stated previously A.P. and C.P. have not placed anything before the court that would have changed the result and "the law does not require a futile or unnecessary act." *Becker v. State*, 695 N.E.2d 968, 973 (Ind. Ct. App. 1998). Further, the parties' admissions distinguish this case from *Essany* and *N.E.* such that it does not conflict with the intentions of the CPOA.

[17] Here, due to the COVID-19 pandemic, the evidentiary hearing took place via the Zoom Meeting platform. A.P and C.P. submitted sixty-one exhibits of text and Facebook messages that the trial court did not read at the hearing. After being sworn in, both A.P. and C.P. admitted to posting messages about A.S. on Facebook and that there was no reason to do so. Further, all parties agreed that they have no reason to be in communication. Tr., Vol. 2 at 4. The trial court's order was directly related to these admissions. The trial court ordered A.P. and C.P. to refrain from "mak[ing] any posts or comments in regards to [A.S.] on

any social media" and stated that "[A.S.'s] family members shall not contact [A.P. and C.P.]" Appellant's App., Vol. 1 at 48.

[18] Due to the parties' admissions at the hearing, we conclude that the trial court's refusal to read the exhibits or allow A.P. and C.P.'s character witnesses to testify does not conflict with the CPOA's intention to promote the "protection and safety of all victims of harassment in a fair, prompt, and effective manner" and prevent future harassment. Ind. Code § 34-26-5-1.[7]

Conclusion

[19] Based on the foregoing, we conclude that sufficient evidence supports the orders for protection because there was evidence of harassment and the hearing was adequate under the CPOA. Therefore, we affirm.

[20] Affirmed.

Bailey, J., concurs.

Tavitas, J., dissents with opinion.

[7] We limit this determination to the specific facts of this case.

A.P. and C.P.,
Appellants-Respondents,

v.

A.S.,
Appellee-Petitioner.

Court of Appeals Case No.
20A-PO-1486

Tavitas, Judge, dissents.

[21] I respectfully dissent from the majority's decision due to several procedural errors resulting in due process violations committed by the trial court. Accordingly, I would reverse and remand.

[22] The acts alleged in the Petition for Ex Part Order for Protection filed by A.S. against A.P. and C.P. involved allegations of harassment. The trial court issued an ex parte order for protection based on a finding of stalking due to harassment. The trial court was not authorized to issue an ex parte order for protection based upon the allegations in the petition pursuant to Indiana Code Section 34-26-5-9.

[23] Indiana Code Section 34-26-5-9(b) states:

> If it appears from a petition for an order for protection or from a petition to modify an order for protection that harassment has occurred, a court:
>
> (1) may not, without notice and a hearing, issue an order for protection ex parte or modify an order for protection ex parte; but
>
> (2) may, upon notice and after a hearing, whether or not a respondent appears, issue or modify an order for protection.
>
> A court must hold a hearing under this subsection not later than thirty (30) days after the petition for an order for protection or the petition to modify an order for protection is filed.

Furthermore, under Indiana Code Section 34-26-5-10, the trial court was required to hold a hearing within 30 days because: 1) A.P. and C.P. requested a hearing; and 2) A.S. requested relief pursuant to Indiana Code Section 34-26-5-10(b), which requires a hearing before such relief can be granted.

[24] Despite the harassment allegations in the petition, the trial court did issue an ex parte order for protection based on a finding of "stalking" apparently due to the allegations of harassment. The trial court set the matter for hearing after it issued the ex parte protection order. A.P. and C.P., as respondents, requested a hearing, and the trial court set the matter for hearing on the same date as the court's already scheduled hearing.

[25] At the scheduled hearing, the trial court refused to view the evidence that A.P. and C.P. tried to submit – "text messages to and from A.S., showing that the conversation was civil[.]" Appellants' Brief p. 7. Instead, the trial court asked A.P. and C.P. whether they posted anything about A.S. on Facebook, and they affirmed that they had. They admitted to the trial court that they did not have a reason to post anything about A.S. on Facebook as stated in the majority opinion.

[26] The majority has found that, during the hearing, A.P. and C.P. submitted sixty-one exhibits of text and Facebook messages that the trial court did not read at the hearing. The majority finds that the trial court was not required to read these submissions because "there was no reason to do so. Further, all parties agreed that they have no reason to be in communication." Slip op. p. 8. The majority held that these admissions were sufficient for issuance of an ex parte order for protection. The majority holds that the hearing requirement was satisfied by these admissions.

[27] The first problem with this conclusion is that the admissions alone do not satisfy the requirements for issuing a protection order pursuant to Indiana Code Section 34-26-5-9. Secondly, the procedure employed by the trial court does not amount to a hearing; Appellants were denied the ability to submit evidence. The trial court's July 8, 2020 "Order Following Hearing" states "the Ex Parte Order for Protection shall remain in place," after making the finding that "Respondents have no reason to be communicating with each other," which is not a sufficient finding. Appellant's App. p. C33.

[28] The problems with the trial court's procedure are, thus, three-fold:

1) The allegations of harassment for the findings of stalking require notice and a hearing before granting an order, and the ex parte order should not have been granted without a hearing;

2) at the hearing, the trial court refused to allow submission of evidence, which is a denial of the right to have a hearing, as required by the protection order statutes; and

3) the trial court made insufficient findings necessary to justify the issuance of an ex parte order for protection as stated in the trial court's July 8, 2020 order.

[29] The trial court denied A.P. and C.P. due process as required by the Indiana Civil Protection Order Act by failing to hold the necessary hearing. Additionally, the trial court made insufficient findings warranting the issuance of an order for protection in the trial court's July 8, 2020 order. I would reverse and remand.