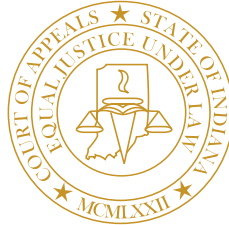


MEMORANDUM DECISION

Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision is not binding precedent for any court and may be cited only for persuasive value or to establish res judicata, collateral estoppel, or law of the case.



IN THE
Court of Appeals of Indiana

J.K.-P.,

Appellant-Petitioner

v.

D.P.,

Appellee-Respondent



July 28, 2025

Court of Appeals Case No.
25A-PO-172

Appeal from the Boone Circuit Court
The Honorable Lori N. Schein, Judge

Trial Court Cause No.
06C01-2412-PO-2038

Memorandum Decision by Judge Brown
Judges Bailey and Weissmann concur.

Brown, Judge.

- [1] J.K.-P. (“Petitioner”) appeals the trial court’s dismissal of his petition for an order for protection on behalf of his child and order that he pay attorney fees. We affirm and remand.

Facts and Procedural History

- [2] Petitioner and S.H. have a child, J.K.-P., II (“Child”). S.H. also has two children with D.P. (“Respondent”). S.H. and Petitioner are parties to a paternity action in cause number 06C01-2407-JP-245 (“Cause No. 245”). On December 12, 2024, Petitioner filed a “Petition for an Order for Protection and Request for a Hearing – Filed on Behalf of a Child” (the “Petition”) against Respondent in cause number 06C01-2412-PO-2038 (“Cause No. 2038”), the cause from which this appeal arises. Appellant’s Appendix Volume II at 26 (capitalization omitted). The Petition alleged that Respondent attempted to cause physical harm to Child, threatened to cause physical harm to Child, placed Child in fear of physical harm, committed stalking against Child, and committed repeated acts of harassment against Child. On December 13, 2024, the court scheduled a hearing in Cause No. 2038 for 2:00 p.m. on December 23,

2024.¹ At 10:00 a.m. on December 23, 2024, the court held a hearing in Cause No. 245 at which Petitioner and S.H. were present.²

[3] At approximately 1:12 p.m.³ on December 23, 2024, the court held a hearing in Cause No. 2038 at which Petitioner appeared pro se and Respondent appeared with counsel. Petitioner presented the testimony of S.H. and his own testimony. Petitioner indicated that he wished to establish a pattern of conduct by Respondent which placed Child at risk. Upon questioning by Petitioner, S.H. testified regarding several incidents involving Respondent consuming alcohol or prescription medication. She testified regarding an incident involving Respondent becoming intoxicated at a festival in 2008 before any of the children were born and an incident involving Respondent taking medication prescribed to someone else and falling down the stairs in 2016 when she was pregnant with Child. She testified regarding a third incident which occurred before Child was born when she received a text from Respondent containing a picture of him in a parked car with their two children in car seats and a message about having a glass of wine, that she was worried that Respondent drove while intoxicated, and that Respondent was clear that he did not drive while intoxicated. S.H. testified that Respondent participated in treatment, “we

¹ The court previously scheduled a hearing for 10:00 a.m. on December 23, 2024, in Cause No. 245.

² In his appellee’s brief, Respondent states, without citation to the record, “[a]fter [the court] concluded the hearing for [Cause No. 245], [it] called upon Petitioner and Respondent and asked both parties if they would agree to move the hearing up from 2:00 p.m. to 1:00 p.m.,” “[b]oth parties agreed to move the hearing up one hour,” and “[n]o one objected to rescheduling the hearing.” Appellee’s Brief at 9.

³ The transcript states, “Proceedings begin at 1:12:12 PM.” Transcript Volume II at 4.

haven't had anything like it since," "I have zero concerns that he's drinking heavily now," and "I'm not worried about it happening now and all of that happened well before [Child] was born." Transcript Volume II at 19.

Petitioner asked if the incident when Respondent fell down the stairs caused her fear, S.H. responded, "I was really scared for [Respondent]. I wasn't personally scared for me that I recall. I mean, that whole thing's alarming, but mostly I was worried about [Respondent]." *Id.* at 25. When asked "it's true that you sometimes let our minor child spend the night at the Respondent's house," she answered, "Yes. He loves to visit there. He begs to go all the time and he goes sometimes on Saturdays if his brothers are there," "it's good for him to go there," "[h]e gets to be around [Respondent] and [his] girlfriend," his girlfriend "is lovely and they're kind to one another," and "I just . . . think it's really good." *Id.* at 27.

- [4] On cross-examination, S.H. testified that Respondent had never been abusive to her, "physically, mentally, or otherwise." *Id.* at 28. She indicated that she never observed or was aware of any abuse by Respondent against any of her three children and Respondent never placed her in fear for her physical safety. Respondent's counsel asked if she "[e]ver felt like [Respondent] was a danger to any of the three children," and S.H. answered, "[w]ell, briefly after this thing where he was drunk and passed out, I was concerned that he was maybe not in a great condition," "I was concerned that it might happen again, but he got the help that he needed and treatment and I haven't had any concerns," and "I haven't had any concerns, no. I don't think he's a danger to us in any way."

Id. When asked if Child ever expressed that he is afraid of Respondent, she replied, “No. He loves [Respondent]. He calls [Respondent] Daddy.” *Id.* at 29. Respondent’s counsel asked if she was aware of any attempts or threats of harm against Child by Respondent, and S.H. answered “No.” *Id.* When asked if she was aware of Respondent “having had any unwelcome or unwanted communication with” Child, she replied “No.” *Id.* The court asked S.H., “[t]here’s been no incidents of domestic violence in your home between you and the Respondent,” and S.H. replied, “No” and “None.” *Id.* The court asked, “you’re not afraid of [Respondent],” and she answered, “No. We’re good friends and we’re good co-parents. I think we’re a good team. I’m not afraid of him. He’s a big help to us.” *Id.*

[5] Petitioner stated that he would like to offer statements of medical treatment or diagnosis from his therapist, and the court denied the request. Petitioner also stated that he “would like to offer as a present-sense impression . . . a number of text messages that [he] ha[d] with [S.H.] with respect to [their] conversations about” Respondent “[l]abeled T1 and T2.” *Id.* at 32. He indicated the messages were on a flash drive. Respondent’s counsel stated “they are hundreds and hundreds of pages,” “it appears there are other people besides the two individuals the Petitioner has indicated [] in the messages throughout these communications,” and “[t]hey also appear to be redacted in that they are not a continuous stream, so they don’t appear to [] fairly and accurately represent the content of those messages.” *Id.* at 33. Petitioner indicated T1 was 225 pages and T2 was 177 pages. The court stated, “[i]f you’ve got specific pages within

there that you think shows that either she believed he was a credible threat or document some type of domestic violence incident that occurred . . . , then you can submit that . . . Do you have that?” *Id.* at 34. Petitioner replied, “Not curated. I’ll just offer testimony with what it says if that’s the more streamlined way.” *Id.* The court asked “is your testimony going to be that she’s told you that he has either been violent with her or some kind of abuse,” and he responded, “[n]ot violent with her, but certainly put her in fear of harm and fear of harm for the kids and repeated acts of harassment that caused her to feel and caused me to feel terrorized, threatened, intimidated, etcetera . . . [a]s a pattern of conduct between 2016 and 2020.” *Id.* at 34-35. The court stated, “[w]hy don’t you just testify as to that,” and Petitioner replied “Okay.” *Id.* at 35.

[6] Petitioner testified “I recall [S.H.] and when [Respondent] was around, she was like her tone changed everything changed.” *Id.* He testified, “[t]here is . . . a number of incidents where I was terrified based on what I heard from [S.H.] that [Respondent] was a threat to my son while he was in utero and after he was born,” “I recall the taking the pills and falling down the stairs,” and “I recall telling [S.H.] that, like, the kid could have been on the stairs, that it’s like he could have been holding . . . one of the kids, um, it was my – with the drunk driving and the all of that just made me - and he never apologized.” *Id.* at 37. He testified, “it was just this constant stream of negativity” and “he got her to kick me out of the house after being invited in.” *Id.* at 38. On cross-examination, Petitioner indicated that he disliked Respondent and that he previously stated that he wished Respondent would die. He stated, “I was

living in denial of [S.H.'s] abuse towards me and how it was just constant, like, being told everything I was doing was wrong.” *Id.* at 45. Petitioner stated, “I would like to try to curate present-sense impressions to the Court with respect to text messages,” the court stated, “I’m still not clear why you think they’re relevant to the issue in front of the Court today, which is is [Respondent] a danger to [Child],” and Petitioner replied “[i]t’s not only text messages from her, but it’s purported recollections by myself.” *Id.* at 47-48. The court denied his request. The court asked Petitioner if he ever heard Respondent make a threat to Child, and he replied “No.” *Id.* at 49.

[7] Respondent’s counsel requested that the court dismiss the Petition under Ind. Trial Rule 41(B). He argued, “Petitioner offered no evidence whatsoever to get anywhere near establishing any of the bases for the issuance of a protection order that he alleged in the petition.” *Id.* at 51. Respondent’s counsel requested an award of attorney fees, arguing that Petitioner’s action was frivolous, unreasonable, and groundless. The court asked, “[h]ow much fees have you incurred,” and Respondent’s counsel replied, “The flat fee of \$6,000.00 for this PO case, Your Honor. I’d be happy to . . . provide an affidavit to the Court.” *Id.* at 54. The court stated:

I’m just looking at your petition. . . . [Y]ou allege the Respondent attempted to cause physical harm to the child who needs protection. I didn’t hear any evidence of that. The Respondent threatened to cause physical harm to the child who needs protection, so I didn’t hear any - you yourself testified you didn’t hear him threatening or causing physical harm to your child, yet you checked that off as one of the allegations. You

also allege “The Respondent placed the child who needs protection in fear of physical harm.” I didn’t hear any evidence about that either. You checked off the Respondent committed stalking against the child who needs protection. I didn’t hear any evidence on that, as well. And finally, that the Respondent committed repeated acts of harassment against the child. I heard nothing about that. . . . Okay, maybe you based upon what [S.H.] had told you several years ago, but she came in here and testified today that those things aren’t true. [Petitioner], I have no other option than to dismiss this case. You haven’t proven it by a preponderance of the evidence and you haven’t even gotten close.

Id. at 54-55. The court dismissed Petitioner’s action. The court also stated, “I’m just going to enter an order finding that this matter does warrant sanctions. It is frivolous and I am going to award the \$6,000.00 for your client’s fees in proceeding to defend himself on allegations that have absolutely no merit in this Court’s opinion.” *Id.* at 56.

Discussion

[8] In his fifty-seven-page appellant’s brief, petitioner asserts that the trial court was biased and erred in several respects. Although Petitioner is proceeding pro se, such litigants are held to the same standard as trained counsel and are required to follow procedural rules. *Evans v. State*, 809 N.E.2d 338, 344 (Ind. Ct. App. 2004), *trans. denied*.

[9] To the extent Petitioner fails to cite relevant authority or relevant portions of the record or present cogent argument with respect to the issues he attempts to raise on appeal, those arguments are waived. *See Loomis v. Ameritech Corp.*, 764

N.E.2d 658, 668 (Ind. Ct. App. 2002) (argument waived for failure to cite authority or provide cogent argument), *reh'g denied, trans. denied*.

A. *Claim of Bias*

[10] Petitioner asserts the trial judge should have disqualified herself, arguing the judge had a “title of Adjunct Professor” and that, “[b]y virtue of her position at [the school], [S.H.⁴] has power and influence over [the trial judge’s] current employment, as well as over the myriad of informal and career-advancing opportunities afforded to those that teach and network as faculty.” Appellant’s Brief at 52.

[11] The law presumes that a judge is unbiased and unprejudiced. *In re Edwards*, 694 N.E.2d 701, 711 (Ind. 1998). In order to overcome that presumption, the appellant must demonstrate actual personal bias. *In re Estate of Wheat*, 858 N.E.2d 175, 183 (Ind. Ct. App. 2006). Generally, an argument or issue raised for the first time on appeal is waived for appellate review. *First Chi. Ins. Co. v. Collins*, 141 N.E.3d 54, 61 (Ind. Ct. App. 2020). Petitioner does not point to the record to show that he raised the issue of bias before the trial court, and he has waived the claim. Waiver aside, we cannot say that Petitioner has demonstrated the trial judge was biased. Petitioner does not point to the record in support of his claim that S.H. had any influence relating to the trial judge serving as an adjunct instructor. While the court did not rule in favor of

⁴ S.H. is a professor at the school.

Petitioner and ultimately found that his action was frivolous, Petitioner does not point to the transcript to show that the judge made remarks evidencing actual personal bias, and the record reveals that the court issued a ruling after admitting extensive testimony by S.H. and Petitioner related to the Petition and that it carefully weighed the evidence. Petitioner has not overcome the presumption that the trial judge was unbiased.

B. *Due Process*

[12] Petitioner argues that he was not given due process. He asserts that he “went to the courthouse the day of the hearing thinking that he was to bring a case against [S.H.] in an interlocutory hearing on the issue of a preliminary injunction” and, “[b]y the afternoon, [he] was bringing a case against a different party opponent in a different case in a different type of hearing.” Appellant’s Brief at 49. He also argues that he was not permitted to properly try his case and points to the court not admitting the text messages.

[13] “Generally stated, due process requires notice, an opportunity to be heard, and an opportunity to confront witnesses.” *Bonecutter v. Discover Bank*, 953 N.E.2d 1165, 1173 (Ind. Ct. App. 2011) (quoting *Morton v. Ivacic*, 898 N.E.2d 1196, 1199 (Ind. 2008)), *reh’g denied, trans. denied*. A trial court has broad discretion regarding the admission of evidence. *Hall v. State*, 177 N.E.3d 1183, 1193 (Ind. 2021).

[14] The record reveals that Petitioner filed his Petition in Cause No. 2038 on December 12, 2024, and that, the next day, the court scheduled a hearing for

2:00 p.m. on December 23, 2024. The record includes a “Notice to Appear,” file-stamped on December 13, 2024, containing Petitioner’s name and mailing address and the date, time, and location of the hearing.⁵ Appellant’s Appendix Volume II at 34; Appellee’s Appendix Volume II at 4. Moreover, Petitioner was present at the hearing in Cause No. 245 on the morning of December 23, 2024, and the transcript of the hearing in Cause No. 2038 in the afternoon on that day reveals that Petitioner was present, the court reviewed the allegations and requests in the Petition and then asked, “[Petitioner], are you ready to proceed, sir,” and Petitioner responded, “I am, Your Honor. I would ask for a separation of witnesses before we do opening statements.” Transcript Volume II at 6. Petitioner gave an opening statement, presented the testimony of S.H., thoroughly questioned her, testified on his own behalf, and presented argument in response to Respondent’s motion to dismiss the Petition. Petitioner does not assert that he requested a continuance. He offered hundreds of pages of text messages and, after some discussion with the court, stated that he would “offer testimony with what it says.” *Id.* at 34. Petitioner has not shown that he was denied due process or was not permitted to try his case.

C. *Dismissal of Petition*

⁵ In the argument section of his brief, Petitioner states without citation to the record, “The Notice to Appear seems to have never been sent. The Petitioner’s Acknowledgement form was left blank.” Appellant’s Brief at 49. The record includes a “Petitioner’s Acknowledgement” which states in part “I have received a copy of the Notice to Appear,” provides a space for a name and signature which are blank, and includes a handwritten notation stating “Did not come in to pick up.” Appellant’s Appendix Volume II at 37. The appellant’s appendix does not include a copy of the chronological case summary in Cause No. 2038.

[15] Petitioner argues, without citation to the record or to authority, that the evidence, “via the filings, the in-court testimony, and the absence of any testimony by [Respondent],” supported his request for an order for protection and that the trial court erred in dismissing his Petition. Appellant’s Brief at 56. Respondent’s counsel moved for dismissal pursuant to Ind. Trial Rule 41(B), which provides in part:

After the plaintiff or party with the burden of proof upon an issue, in an action tried by the court without a jury, has completed the presentation of his evidence thereon, the opposing party, without waiving his right to offer evidence in the event the motion is not granted, may move for a dismissal on the ground that upon the weight of the evidence and the law there has been shown no right to relief. . . .

A Trial Rule 41 motion to dismiss tests the sufficiency of the plaintiff’s case-in-chief. *Brown v. Guinn*, 970 N.E.2d 192, 194-195 (Ind. Ct. App. 2012).

[16] The record reveals that Petitioner presented the testimony of S.H. and his own testimony. The court found that Petitioner did not present evidence showing, by a preponderance of the evidence, that Respondent attempted or threatened to cause physical harm to Child, placed Child in fear of physical harm, or committed stalking or repeated acts of harassment against Child. Our review of the transcript reveals, as the trial court found, that Petitioner did not present evidence supporting his allegations. The trial court did not err in granting Respondent’s motion to dismiss.

D. *Award of Attorney Fees*

[17] Petitioner maintains the trial court’s order that he pay \$6,000 in attorney fees is improper and that his case was not frivolous. He further argues that the award of attorney fees is excessive, that Respondent’s counsel “had only made his appearance on the Thursday prior to that Monday’s hearing,” and that the court did not consider the parties’ relative economic conditions. Appellant’s Brief at 41.

1. *Decision to Award Attorney Fees*

[18] Ind. Code § 34-52-1-1 provides that the court in a civil action may award attorney fees as part of the cost to the prevailing party if it finds that either party brought an action or continued to litigate an action that is frivolous, unreasonable, or groundless or litigated the action in bad faith. We review the trial court’s findings of fact under the clearly erroneous standard, and we review de novo its legal conclusions. *Scheffer v. Centier Bank*, 101 N.E.3d 815, 825 (Ind. Ct. App. 2018). We review the trial court’s decision to award attorney fees and the amount of fees under an abuse of discretion standard. *Id.* A claim is frivolous if it is made primarily to harass or maliciously injure another, if counsel is unable to make a good faith and rational argument on the merits of the claim, or if counsel is unable to support the action by a good faith and rational argument for extension, modification, or reversal of existing law. *Id.* A claim is unreasonable if, based upon the totality of the circumstances, including the law and facts known at the time of filing the claim, no reasonable attorney would consider the claim justified or worthy of litigation. *Id.* at 825-

826. A claim is groundless if no facts exist which support the legal claim relied upon and presented by the losing party. *Id.* at 826.

[19] Given the failure of Petitioner to present evidence in support of the allegations in his Petition as noted by the trial court and reflected in the transcript, we cannot say the court abused its discretion in electing to award attorney fees. *See Kahn v. Cundiff*, 533 N.E.2d 164, 172 (Ind. Ct. App. 1989) (“[B]ased on the trial court’s finding that Kahn had no facts to support a claim against Larry we must agree with the trial court’s legal conclusion that Kahn’s claim was frivolous, unreasonable or groundless.”), *aff’d*, 543 N.E.2d 627 (Ind. 1989).

2. Reasonableness of Amount of Attorney Fees

[20] “In determining a reasonable amount of attorney’s fees, consideration should be given to the nature and difficulty of the litigation; the time, skill, and effort involved; the fee customarily charged for similar legal services; the amount involved; the time limitations imposed by the circumstances; and the result achieved in the litigation.” *R.L. Turner Corp. v. Wressell*, 44 N.E.3d 26, 39 (Ind. Ct. App. 2015) (citing *In re Eiteljorg*, 951 N.E.2d 565, 573 (Ind. Ct. App. 2011) (noting factor of intensive and protracted litigation and citing Ind. Professional Conduct Rule 1.5 (factors considered in determining the reasonableness of fee)), *trans. denied*; *Zebrowski & Assocs., Inc. v. City of Indpls., By & Through its Bd. of Dirs. for Utils. of its Dep’t of Pub. Utils.*, 457 N.E.2d 259, 264 (Ind. Ct. App. 1983) (what transpires throughout a lawsuit is indirect evidence of what constitutes a reasonable attorney fee)), *trans. denied*.

[21] The Petition was filed on December 12, 2024, and the next day the court set a hearing for December 23, 2024. On December 23, 2024, the court held the scheduled hearing, which the transcript indicates lasted less than one and one-half hours during which Respondent’s counsel cross-examined S.H. and Petitioner.⁶ While Respondent’s counsel indicated that he charged a flat fee for the case, he did not provide an explanation as to the relevant factors for consideration by the court in determining a reasonable amount of attorney fees in this case. *See In re O’Farrell*, 942 N.E.2d 799, 801 (Ind. 2011) (indicating flat fee agreement must be reasonable); *In re Kendall*, 804 N.E.2d 1152, 1160 (Ind. 2004) (Ind. Professional Conduct Rule 1.5 requires all attorney fees to be reasonable). In light of the record, we remand for a determination of a reasonable award of attorney fees in light of the relevant considerations including the nature of the representation and the time and effort involved. *See Kahn*, 533 N.E.2d at 172 (affirming trial court’s finding action was frivolous, unreasonable or groundless, but reversing its award of attorney fees as to the amount and remanding for hearing as to reasonable attorney fees).

[22] For the foregoing reasons, we affirm the trial court’s dismissal of Petitioner’s action and its decision to award attorney fees, and we remand for a determination of a reasonable award of attorney fees consistent with this opinion.

⁶ The transcript indicates the proceedings began at 1:12:12 p.m. and ended at 2:38:38 p.m.

[23] Affirmed and remanded.

Bailey, J., and Weissmann, J., concur.

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