MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Todd Mason,
Appellant-Respondent,

v.

Tobi Kay Mares,
Appellee-Petitioner.

April 25, 2022

Court of Appeals Case No. 21A-PO-2167

Appeal from the Hamilton Superior Court

The Honorable William J. Hughes, Judge

Trial Court Cause No. 29D03-1804-PO-3335

Mathias, Judge.

[1] Todd Mason appeals the trial court's issuance of a second order for protection on behalf of Tobi Kay Mares.[1] Mason raises a single issue for our review, which we restate as whether sufficient evidence supports the trial court's issuance of the second order for protection. We affirm.

Facts and Procedural History

[2] After several acts of domestic violence against her, in April 2018, Mares filed a petition for an order for protection against Mason. In May 2019, the trial court held an evidentiary hearing on Mares' petition. Following that hearing, the court found that Mason "represents a credible threat to the safety" of Mares and that the order for protection was "necessary to bring about a cessation of the violence or the threat of violence." Appellant's App. Vol. 2 p. 33.

[3] Because Mason and Mares share two children, the court's order for protection limited Mason's ability to communicate with Mares as follows:

> [Mason] is prohibited from harassing, annoying, telephoning, contacting, or directly or indirectly communicating with [Mares], except: *The parties may communicate about their shared children . . . via the Parenting App, Our Family Wizard[,] only*. This

[1] In her brief and Appellee's Appendix, Mares has replaced the parties' names with initials. In doing so, she notes that the use of initials in appeals involving orders for protection is "consistent with the Court's use . . . and the adoption of this practice," citing two 2020 Indiana appellate opinions. Appellee's Br. at 5 n.1. But Mares filed her second order for protection in April 2021, and at that time—and at all times since—Indiana Access to Court Records Rule 5(C)(2) made clear that "[n]ames shall not be redacted in protection order cases . . . ." Further, the trial court records and Mason's filings on appeal already, and properly, use the parties' full names. Thus, we likewise use the parties' names and not their initials.

> Order does not prohibit direct contact between [Mason] and his children . . . .

Id. (emphasis added). The order for protection further clarified that it was not to be construed to be in conflict with any existing and valid custody orders. *Id.* at 33-34. The order for protection was set to expire automatically on May 22, 2021.

[4] Following the issuance of the order for protection, Mason sent Mares the following messages:

- On December 17, 2019, Mason stated:

  > You have not held up to your end of the agreement with . . . your attorney to drop the bogus order of protection. Because of this, I am unable to come see [a child's] performance tomorrow. Real nice.
  >
  > Also, who will [the other child] be spending Christmas Eve and Christmas Day with?

  Ex. Vol. 3 p. 8.

- On January 2, 2020, Mason stated:

  > Very necessary protective order for you is [sic] to keep me silent, and not ever speak to anyone.
  >
  > Is it appropriate for me to ask when [the children's] mother is home? What is the occupation of their mother? Just curious.
  >
  > And when are my daughters at home alone?

> Or am I aloud [sic] to ask this[?]

Id. at 16.

- On February 13, 2020, Mason attempted to add Mares' husband to the parenting app. Mares sent Mason a message stating that her husband "declines the involuntary email you sent signing him up for this app without his permission." *Id.* at 14. Mason responded to Mares' message as follows: "My apologies to [him] if he is determined to be kept out of the loop regarding anything you try to dictate." *Id.* Three minutes later, Mason sent the following additional message to Mares and their two children:

  > Is there a good reason that you would not want your husband/love of your life to know our communication?
  >
  > Please answer[.]

  Id. at 12.

[5] In April 2021, Mares filed her petition to extend the existing order for protection. In June, Mason sent Mares the following message:

> First of all, you don't dictate the calendar. It must be agreed upon, second [sic] your protective order is a joke.
>
> It's a shame you would do all of this with my daughters in the middle.
>
> They will unfortunately grow to resent you for all of this ridiculousness.
>
> I can pick up the girls tomorrow at 10am central time.

Id. at 18.

[6] The trial court held an evidentiary hearing on Mares's petition to extend the order for protection. At that hearing, Mares had admitted into evidence Mason's various messages to her. Mares then testified that those messages made her feel "threatened," made her feel like Mason was trying "to get into my personal life," made her feel "very uneasy," and made her feel like Mason thought the order for protection was "a joke he doesn't take . . . seriously." Tr. Vol. 2 pp. 11, 17-18.

[7] Following the evidentiary hearing, the trial court granted Mares's petition and entered a second order for protection against Mason. In the second order, the court found in relevant part as follows:

> Despite the Court's clear and unambiguous order that [Mason] not contact [Mares] except about matters related to their children, [Mason] has on multiple occasions directly contacted [Mares]. The Court notes the following contacts: December 17, 2019, January 2, 2020, February 13, 2020, and June 7, 2021[,] concerning matters that were not related to the children. In some instances[,] the contacts between the parties do contain information related to the children, but [Mason] affirmatively asks [Mares] questions about the protective order or attempts to disparage her in these contacts. Questions about the protective order should have been directed to [Mason's] counsel. [Mason's] questions or statements to [Mares] are not shielded simply because he also asked questions about or made statements about the children in the same communications.

Appellant's App. Vol. 2 p. 14. This appeal ensued.

Discussion and Decision

[8] Mason appeals the trial court's issuance of the second order for protection, which the court entered after an evidentiary hearing. Our standard of review in such appeals is well established. We first determine whether the evidence supports the findings, and we then determine whether the findings support the order. *Fox v. Bonam*, 45 N.E.3d 794, 798 (Ind. Ct. App. 2015). 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. *Id.* We do not reweigh evidence or reassess witness credibility, and we consider only the evidence favorable to the trial court's order. *Id.* The party appealing the order must establish that the findings are clearly erroneous. *Id.* Findings are clearly erroneous when a review of the record leaves us firmly convinced that a mistake has been made. *Id.* (quotation marks omitted). We do not defer to conclusions of law, however, and evaluate them *de novo*. *Id.* (quotation marks omitted).

[9] Mason claims that Mares failed to present sufficient evidence to support the second order for protection. According to Mason, Mares failed to present any evidence that the second order was currently necessary to bring about a cessation of violence or the threat of violence. Mason then characterizes his December 2019 to June 2021 messages to Mares as "harmless communications" and only "[t]echnical violations" of the first order for protection. Appellant's Br. at 7, 9. He adds his view that the messages demonstrate his "frustration" but that they do not communicate violence. *Id.* at

14. And Mason asserts that "[t]he record does not reflect that [Mares's] claims of fear or uncomfortableness were sincere," and instead Mares's reactions to his messages were unreasonable. *Id.* at 17.

[10] Our Supreme Court has made clear that "[e]vidence that the respondent violated a protective order may alone justify extending the order's duration because it shows a disregard of judicial efforts to ensure a prior victim's safety and security." *S.H. v. D.W.*, 139 N.E.3d 214, 221 (Ind. 2020). Here, the messages identified by the court in its second order for protection demonstrate that Mason violated the first order. In those messages, Mason repeatedly communicated with Mares about matters unrelated to their children. For example, he complained about the order for protection, he asked Mares about her occupation and when she is home, and he asked her about her relationship with her husband. Those communications were in violation of the first order for protection. And we likewise agree with the trial court that Mason does not get to hide behind his children by adding in comments or questions relating to them in the same messages.

[11] The trial court expressly premised the issuance of the second order on Mason's violation of the terms of the first order. The trial court's findings are supported by the record, and its judgment is supported by those findings. *See id.* Mason's further arguments on appeal that Mares's reactions to his messages were insincere is simply a request to reweigh the evidence, which our court will not do. Similarly, we cannot say as a matter of law that Mares, a victim of domestic violence perpetuated on her by Mason, is unreasonable in her reactions to

Mason's repeated violations of the first order for protection. Therefore, we affirm the trial court's issuance of the second order for protection.

[12] Affirmed.

Brown, J., and Molter, J., concur.