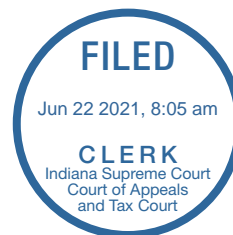


MEMORANDUM DECISION

Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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IN THE COURT OF APPEALS OF INDIANA

Jesse King,
Appellant,

v.

J.T.,
Appellee.

June 22, 2021

Court of Appeals Case No.
21A-PO-137

Appeal from the Warren Circuit
Court

The Honorable Hunter J. Reece,
Judge

Trial Court Cause No.
86C01-2008-PO-133

Brown, Judge.

[1] Jesse King appeals the trial court’s ex parte order for protection and subsequent orders for protection following a hearing. We affirm.

Facts and Procedural History

[2] King and J.T. were in a relationship and lived together from May 2019 until July 21, 2020, along with J.T.’s three children from a previous relationship. When they broke up, J.T. and her children went to stay with a friend.

[3] On August 24, 2020, J.T. filed a Petition for an Order for Protection and Request for a Hearing and indicated she was or had been a victim of domestic or family violence, stalking, and repeated acts of harassment. The next day, she filed an amended petition which indicated she was a victim of stalking and repeated acts of harassment and that King placed her in fear of physical harm, stalked her, and committed repeated acts of harassment against her. The amended petition included five handwritten pages which detailed two months of alleged interactions with King leading up to the filing of J.T.’s petition. That same day, the court set a hearing for September 23, 2020, which it later continued at King’s request and then by agreement of the parties, and it issued an ex parte order for protection on August 26, 2020.

[4] At the hearing, J.T. and King both testified. J.T. testified that, prior to the breakup, she and King were “fighting a lot.” Transcript Volume II at 7. She testified concerning an event held for a friend’s birthday on July 31st at which King argued with her, was angry because of how J.T.’s daughters dressed and that they dyed their hair, and made comments about how J.T.’s youngest

daughter “looked like a trailer park wh---” and like she was getting ready to work at the strip club. *Id.* at 10. She testified she discovered her youngest daughter crying, King shared that he had “been talking to her about whether or not she wanted him to stay in her life,” and that her daughter was “very upset and afraid to tell [King] how she felt,” was afraid he would become upset with her, and said that she did not want him around. *Id.* She indicated that when she explained to King that it was inappropriate to speak to her daughter about such things, the conversation became heated, “he punched the side of the van,” and “it got loud” such that the friend asked them to leave. *Id.*

[5] The court admitted copies of text messages from King which included the following statements: “There’s no sense in this you know,” “I’m sure you’re oh so sweet when you ask them if they’d like to call me,” “No stink eye, no bad attitude that tells them they better not say yes,” and “I’m sure none of that is going on.” Exhibits Volume I at 7-8. When asked if, as “he continues to text you, are you ignoring him,” J.T. answered affirmatively. Transcript Volume II at 13. She answered affirmatively when asked if she finally responded to him and if he continued to attempt to contact her and her children despite her request to stop contacting her and her explanation that he did not have permission to contact her children. She was asked to read her response after King texted her four more times, and she stated:

You are not their father, I don’t want them around you while you are being so toxic. I do not want you or anything to do with you and your bullsh--. If you do not stop this I will block you so that in six (6) months when you are showing progress and you are in

therapy you won't be able to contact me because you will be blocked.

Id. at 14. The court admitted screenshots of Facebook posts by King, and J.T. described several of them and indicated the language was offensive to her and that she wanted him to stop doing this on Facebook where all her friends could see. She answered affirmatively when asked if he was “continually hounding” her to see the girls. *Id.* at 20.

[6] J.T. testified that she saw a psychologist and that the psychologist had notified her that King left voicemails asking him to return his calls. The court admitted audio recordings of the voicemail messages. In one voicemail, King identified himself, indicated that J.T. was a patient of the psychologist who “(inaudible) has been wanting to talk to me for some time at least according to her,” it concerned “some things that are bothering her,” and “it has just come down to the point where I believe that it would actually be a good thing to try to help her out.”¹ *Id.* at 24. In the second voicemail, King indicated he

left a message a couple of evenings ago trying to contact you. This is in regards to a patient [J.T.] that you have. She has been trying to get me to talk to you for some time. She is having a bit of a problem right now. I am not going to go into detail on voicemail, but it is something that needs to be attended to and she has told me repeatedly that you are her [doctor]. So, if you are not her [doctor] I would appreciate you calling me regardless

¹ The transcript from the hearing contains a transcription of the voicemails as the recordings were played for the court.

to let me know that . . . we are having serious . . . there is some serious mental . . . health issues going on with her at the current moment.

Id. at 24-25. She indicated that she repeatedly asked him to stop trying to contact her and, when asked if some of King's behavior caused her to fear for her and her children's safety to some degree, she answered affirmatively and stated, "it seems like he won't stop trying to figure out where I am at, where they are at." *Id.* at 26.

[7] During cross-examination, J.T. indicated that she did not recall asking King to speak with her psychologist on his own. When asked if King had ever threatened to cause her or her family any harm, J.T. stated that he "has drawn back like he was going to punch me and when I asked him about it he admitted that he wanted to punch me if that's what you are asking" and indicated it happened about a week before they broke up. *Id.* at 34. She indicated that at the party he threw a folding chair into the van as she was sitting in it and the door was open. She testified that she was "afraid of what he might do because he doesn't seem to want to just let us go and be done." *Id.* at 35. She clarified that she expressed, "directly after the breakup," to S.F., a friend at whose house she had spent some nights, that she wanted King to try to remain in her girls' lives. *Id.* During redirect examination, J.T. indicated that King had attempted to contact her indirectly "through [her] friends, like trying to contact [her] son's [f]ather." *Id.* at 37. She testified she was scared that he had figured out where she lived. S.F. testified that "right when they . . . broke up . . . she wanted him

to try harder and make an effort and I think his way of making an effort was to call a lot or try to see the girls . . . and then I think that that became too much and it kin[d] of got bad from there.” *Id.* at 48.

[8] That same day, the trial court entered an order for protection finding that King “represents a credible threat to the safety of [J.T.] or a member of [J.T.’s] household” and that J.T. had shown, by a preponderance of the evidence, that domestic or family violence or repeated acts of harassment had occurred sufficient to justify the issuance of the order. Appellant’s Appendix Volume II at 47. The order enjoined King from threatening to commit or committing acts of domestic or family violence, stalking, sex offenses, a course of conduct involving repeated or continuing contact with J.T. that is intended to prepare or condition J.T. for sexual activity, or harass J.T. or her children. It also prohibited King from harassing, annoying, telephoning, contacting, or directly or indirectly communicating with J.T.

[9] On December 18, 2020, King filed a motion to correct error arguing there were no acts of domestic or family violence against J.T. or J.T.’s household members. He asserted that a portion of the court’s order for protection – the portion indicating he was “not Brady Disqualified” but ordering that, once he had received notice and an opportunity to be heard, it was “a federal violation to purchase, receive or possess a firearm while subject to this order” – was inconsistent with the rest of the order. *Id.* at 55.

[10] On January 6, 2021, the trial court issued an order granting in part King's motion to correct error finding a scrivener's error in relation to the Brady disqualification, and stating that the objection was well taken and that it would modify the cover sheet and order accordingly. The order found no other error and noted that, while King may have denied domestic violence took place, the issue was for the trier of fact to resolve and that J.T. testified credibly. The court entered an amended order of protection.

Discussion

[11] Before addressing King's arguments, we note that J.T. did not file an appellee's brief. When an appellee fails to submit a brief, we do not undertake the burden of developing arguments, and we apply a less stringent standard of review; that is, we may reverse if the appellant establishes *prima facie* error. *Zoller v. Zoller*, 858 N.E.2d 124, 126 (Ind. Ct. App. 2006). This rule was established so that we might be relieved of the burden of controverting the arguments advanced in favor of reversal where that burden properly rests with the appellee. *Wright v. Wright*, 782 N.E.2d 363, 366 (Ind. Ct. App. 2002).

[12] King argues the trial court erred and denied him due process in issuing an ex parte order for protection without first holding a hearing, and he argues that it erred in issuing orders of protection following the hearing because it found he committed an act of domestic or family violence when J.T. did not allege acts of violence. He also argues there was no evidence of stalking or harassment and contends that J.T. admitted she mutually communicated with him until the day she filed for a protective order, he had not had any contact with J.T. for

nearly three months at the time of the hearing, and no evidence demonstrated he made direct communication with her children or stalked or harassed them.

[13] Indiana’s Civil Protection Order Act (“CPOA”) is found at Ind. Code §§ 34-26-5. Ind. Code § 34-26-5-2(b) provides that “[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.” Ind. Code § 34-6-2-51.5 defines harassment for purposes of Ind. Code §§ 34-26-5 as “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.” It also provides that harassment “does not include statutorily or constitutionally protected activity, such as lawful picketing pursuant to labor disputes or lawful employer-related activities pursuant to labor disputes.” Ind. Code § 34-6-2-51.5(b). Ind. Code § 34-26-5-9(g) provides that “[a] finding that domestic or family violence or harassment 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” and that, “[u]pon a showing of domestic or family violence or harassment by a preponderance of the evidence, the court shall grant relief necessary to bring about a cessation of the violence or the threat of violence.”

[14] “Under our traditional two-tiered standard of review, *see* Ind. Trial Rule 52(A), we ask whether the evidence supports the trial court’s findings and whether its

findings support the judgment.” *S.H. v. D.W.*, 139 N.E.3d 214, 220-221 (Ind. 2020). 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. *Fox v. Bonam*, 45 N.E.3d 794, 798 (Ind. Ct. App. 2015); *Mysliwy v. Mysliwy*, 953 N.E.2d 1072, 1076 (Ind. Ct. App. 2011), *trans. denied*. We do not reweigh evidence or reassess witness credibility. *Fox*, 45 N.E.3d at 798. We consider only the probative evidence and reasonable inferences supporting the order. *Tisdial v. Young*, 925 N.E.2d 783, 785 (Ind. Ct. App. 2010).

[15] To the extent King argues a violation of due process, we note that “[w]hether a party was denied due process is a question of law that we review *de novo*.” *P.S. v. T.W.*, 80 N.E.3d 253, 255 (Ind. Ct. App. 2017) (quoting *Miller v. Ind. Dept. of Workforce Dev.*, 878 N.E.2d 346, 351 (Ind. Ct. App. 2007)). Ind. Code § 34-26-5-9(a) gives authority to the trial courts to, “without notice or hearing, immediately issue an order for protection *ex parte*” if it appears from a petition for an order for protection that domestic or family violence has occurred. J.T.’s August 2019 petitions alleged stalking by King. Stalking, for purposes of the CPOA, is included in the definition of “domestic or family violence” pursuant to Ind. Code § 34-6-2-34.5. Stalking is defined in Ind. Code § 35-45-10-1 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.” Ind. Code § 34-26-5-9(c) provides that a court

may grant the following relief without notice and hearing in an ex parte order for protection . . . under subsection (a):

(1) Enjoin a respondent from threatening to commit or committing acts of domestic or family violence against a petitioner and each designated family or household member.

(2) Prohibit a respondent from harassing, annoying, telephoning, contacting, or directly or indirectly communicating with a petitioner.

(3) Remove and exclude a respondent from the residence of a petitioner

(4) Order a respondent to stay away from the residence . . . or place of employment of a petitioner

[16] The relief the trial court granted in the August 26, 2020 order included: (1) enjoining King from threatening to commit or committing acts of domestic or family violence, stalking, a sex offense, or a course of conduct involving repeated or continuing contact with J.T. that is intended to prepare or condition her for sexual activity; (2) prohibiting King from harassing, annoying, telephoning, contacting, or directly or indirectly communicating with J.T.; (3) removing and excluding King from J.T.’s residence; and (4) ordering him to stay away from J.T.’s residence and place of employment. This relief is permitted by the ex parte statute. *See* Ind. Code § 34-26-5-9(c). We further note that the court held a hearing following the continuances requested by King and

agreement of the parties. We conclude that King's due process rights were not violated.

[17] Turning to the trial court's orders for protection that were issued following the hearing, we note that J.T. indicated at the hearing that King continued to attempt to contact her and her children despite her request that he stop contacting her. She indicated that he was "continually hounding" her to see the girls, and she described an incident after the breakup at which King made J.T.'s daughter cry and express she did not want him around, the conversation became heated, he threw a folding chair into the van as she was sitting in it and the door was open, and he punched the side of the van. Transcript Volume II at 20. She read a text in which she communicated to King that he was not the children's father and she did not want anything to do with him. She also presented two voicemails showing that he attempted to contact her psychologist without her permission, and she testified she was afraid of what he might do because he did not seem to want to let them go. The trial court was able to assess the credibility of J.T. and King and weigh their testimony and the evidence, and we conclude based upon the record that J.T. presented evidence of probative value to establish by a preponderance of the evidence that King's actions would cause a reasonable person to suffer emotional distress and

actually caused her to suffer emotional distress, which supports the issuance of an order for protection. We cannot say reversal is warranted.²

[18] For the foregoing reasons, we affirm the trial court.

Affirmed.

Bradford, C.J., and Crone, J., concur.

² To the extent King argues that the message communications with J.T. were mutual, we note that one message states: “I told you more than once what I’ve told them. I told you more than once why I needed space. . . . I don’t know what to say anymore. This is why I told you to back off.” Exhibits Volume I at 4. Another message states:

For the last time, please stop contacting me. I’ve told you multiple times I do not want to talk bc [sic] it doesn’t go well and none of us need that. You have continually failed to respect this request. Refer to your Facebook posts if you’ve forgotten how you feel . . . since you forget all our conversations about the situation with the girls in all those hateful, nasty, bullsh-- posts . . . I’ve told you multiple times that if the girls want to talk, I would let them call you. However MY children do not

Id. at 9. The screenshot of the message does not contain words continuing beyond “do not.” *Id.*