MEMORANDUM DECISION

ATTORNEY FOR APPELLANT

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IN THE COURT OF APPEALS OF INDIANA

H.P.,

Appellant-Respondent,

v.

A.K.,

Appellee-Petitioner.

February 28, 2022

Court of Appeals Case No. 21A-PO-2040

Appeal from the Allen Superior Court

The Honorable Jennifer L. Degroote, Judge

Trial Court Cause No. 02D09-2103-PO-491

Riley, Judge.

STATEMENT OF THE CASE

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

[2] We affirm.

ISSUES

[3] H.P. presents this court with two issues, which we restate as:

> (1) Whether the trial court entered adequately detailed findings in support of the protective order; and
>
> (2) Whether the evidence supported the entry of the protective order.

FACTS AND PROCEDURAL HISTORY

[4] In 2012, A.K. began dating H.P.'s son, C.P. H.P. is the grandmother of A.K.'s two minor children with C.P. H.P. and A.K. have had a tumultuous relationship. In 2018, A.K. sought, but was denied, an order of protection against H.P. H.P. continued to have contact with her two grandchildren until July 2020, when the relationship between H.P. and A.K. completely broke down.

[5] On February 22, 2021, H.P. made an anonymous report to the Child Protective Services (CPS) that, among other things, A.K. was prostituting herself, using drugs, and consorting with criminals in her home when the children were present. H.P. also reported to CPS that A.K. had neglected to procure

appropriate treatment for her autistic son and that A.K.'s Green Card had expired. CPS investigated, and after touring A.K.'s home, checking with the children's physician and therapist, speaking with A.K.'s daughter, and having A.K. submit to a drug test, CPS could not substantiate the report. In the same week that H.P. made the CPS report, H.P. filed two police reports against A.K. alleging, among other things, that A.K. had posted H.P.'s credit score online and that A.K.'s friends wanted H.P.'s address so they could assault her.

[6] On March 1, 2021, A.K. filed a petition for a protective order against H.P. alleging that she had been the victim of stalking and repeated acts of harassment by H.P. which had placed her in fear of physical harm. A.K. alleged six incidents of harassment, as follows:

> 1. H.P. had repeatedly called her phone from a blocked number, including a call that had taken place "on Saturday" during which H.P. had cursed at her and threatened her after A.K. had answered the call but did not say anything;
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> 2. H.P. had contacted her from a social media profile registered under another name after A.K. had blocked H.P.'s known social media profile;
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> 3. H.P. had contacted A.K.'s best friend, Andrea Horsley (Horsley), "spreading lies with malicious intent," and threatened Horsley;
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> 4. H.P. had contacted a relative of A.K.'s who lived in New York, Matilda Mujakic (Mujakic), and said untrue things about A.K.;

> 5. A truck that A.K. believed to be H.P.'s family vehicle had driven by A.K.'s home around the time that CPS arrived to investigate the report it had received; and
>
> 6. H.P. had posted about A.K. on social media since 2014 and continued to follow A.K. through accounts registered under other names. H.P. had obtained A.K.'s social security number and contacted A.K.'s utility companies. H.P. had contacted A.K. through fake phone numbers and once sent A.K. photos of exposed male genitalia which A.K.'s young daughter had also seen.

(March 1, 2019, Petition for Protective Order, Cause No. 02D09-2103-PO-491). Along with her petition, A.K. submitted a number of exhibits consisting of screen grabs of cell phone call data and social media posts. A.K. did not seek an *ex parte* order of protection. On March 5, 2021, A.K. submitted additional exhibits in support of her petition consisting of screen grabs of social media posts. On March 29, 2021, H.P. filed a response to A.K.'s petition with exhibits.

[7] On June 2 and June 3, 2021, the trial court held hearings on A.K.'s protective order petition. A.K. appeared *pro se* while H.P. was represented by counsel. A.K. testified but did not have any of the exhibits she had submitted with her petition admitted into evidence. A.K. did not request that the trial court take judicial notice of her filings. Concerning her allegations that H.P. had harassed her with calls, A.K. acknowledged that she did not have any proof that it was H.P. making most of the anonymous calls, but she also testified regarding the February 27, 2021, call during which H.P. "was cursing at me and her husband

was in the background telling her to just leave it alone, just leave it alone, hang up[.]" (Transcript p. 22). Around this time, video surveillance at A.K.'s home captured an image of a truck driving by her home that A.K. testified she recognized from previous encounters as belonging to H.P.'s husband.

[8] Regarding her allegation that H.P. had repeatedly harassed her through social media, A.K. related that, prior to filing the CPS report, H.P. had contacted Horsley by private message and stated that A.K. was a "user" who was "not really her friend." (Tr. p. 9). H.P. had also threatened Horsley, telling Horsley to "come to her house." (Tr. p. 18). A.K. compared H.P.'s social media profile through which she and H.P. had communicated in the past with the profile of the account from which the messages to Horsley had been sent and concluded it was H.P.'s account. A.K. also testified that, at some point, she blocked H.P.'s known social media account but that H.P. created accounts using other names through which she contacted A.K. and followed A.K.'s social media postings. According to A.K., H.P. used a profile with the name "Sweetness Sarah" to send her the message, "Fuck you bitch." (Tr. p. 25). A.K. related the substance of the allegations H.P. made to CPS and the results of the investigation. A.K. described H.P.'s conduct as "nonstop harassment" since 2012, "crazy," and "not okay[.]" (Tr. p. 7). Regarding social media posts she had made in response to some posts by H.P., A.K. explained that she was tired of "being bullied" and felt as though "most of it was done in a manner where she wanted a reaction out of me . . . She wanted me to argue with her and I didn't want to go there but these posts I did." (Tr. p. 24).

[9] H.P. also testified at the hearing. She denied making the February 27, 2021, call to A.K., driving by her home around that time, creating social media profiles, including "Sweetness Sarah", to follow and contact A.K., or contacting Horsley. H.P. had alternate explanations for how she came to know about postings on A.K.'s social media. At the close of the parties' testimony, the trial court asked H.P. questions about her report to CPS. In his closing remarks, counsel for H.P. acknowledged that allegations made to CPS "can be used, uh, to harass others but, you know, my client or anyone has a right to contact CPS and a duty even in some cases when they believe that children are in danger." (Tr. p. 57). Before ending the hearing, the trial court observed that there appeared to be very little substantiating H.P.'s CPS report and "[t]hat's a huge threat of sending someone away with immigration[.]" (Tr. pp. 59-60). The trial court also observed that "it's one thing to report things to CPS. It's another thing to exaggerate and where does it cross the line and does it become harassment? That's for me to address and I will take it under advisement and issue a ruling." (Tr. p. 60).

[10] On August 18, 2021, the trial court entered a protective order in A.K.'s favor prohibiting H.P. from threatening to or committing acts of harassment against A.K. and A.K.'s two minor children; harassing, annoying, telephoning, contacting, or communicating with A.K., directly or indirectly; and ordering H.P. to stay away from A.K.'s residence, school, and/or place of employment.

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

DISCUSSION AND DECISION

I. *Standard of Review*

[12] H.P. challenges the evidence supporting the protective order. 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). 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.*

[13] In addition, we observe that A.K. has not filed an appellee's brief. When an appellee fails to file a brief, we do not undertake the burden of developing an argument on his or her behalf. *C.H. v. A.R.*, 72 N.E.3d 996, 1001 (Ind. Ct. App. 2017). Instead, we will reverse the trial court's determination if the appellant demonstrates a case of *prima facie* error. *Id*. "*Prima facie* error in this context is defined as, at first sight, on first appearance, or on the face of it." *Id*. Under a *prima facie* error standard of review, we are relieved of the burden on controverting arguments advanced in favor of reversal, as that burden properly rests with the appellee. *M.R. v. B.C.*, 120 N.E.3d 220, 223 (Ind. Ct. App. 2019). However, even under this relaxed standard of review, we are obligated to

correctly apply the law to the facts in the record in order to determine whether reversal is required. *Id*. In doing so, we still may not reweigh the evidence or reassess witness credibility. *Bokori v. Martinoski*, 70 N.E.3d 441, 443 (Ind. Ct. App. 2017).

II. *Adequacy of the Trial Court's Findings*

[14] H.P.'s first contention is that the trial court did not enter adequately detailed findings to support the issuing of the protective order. As already noted, when issuing a protective order, a trial court is required to enter special findings of fact and conclusions thereon. *R.W. v. J.W.*, 160 N.E.3d 195, 203 (Ind. Ct. App. 2020). While the trial court is mandated to enter findings of fact, those findings need not be extensive. *Costello v. Zollman*, 51 N.E.3d 361, 365 (Ind. Ct. App. 2016), *trans. denied*. The purpose of the entry of findings of fact and conclusions thereon is to "'establish the basis for restricting a person's rights.'" *Young v. Young*, 81 N.E.3d 250, 256 (Ind. Ct. App. 2017) (quoting *Costello*, 51 N.E.3d at 366).

[15] Here, the trial court entered the following findings in support of its Order:

> a. N/A
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> b. The [c]ourt is required to hold a hearing under Ind. Code § 34-26-5-9(b) or § 34-26-5-10(b).
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> c. [A.K.] was present at the hearing and [H.P.] was present.
>
> d. This order does not protect an intimate partner or child.
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> e. [H.P.] had notice and an opportunity to be heard.

> f. [H.P.] represents a credible threat to the safety of [A.K.] or a member of [A.K.'s] household.
>
> g. [A.K.] has shown, by a preponderance of the evidence, that repeated acts of harassment [have] occurred sufficient to justify the issuance of this Order.
>
> h. [H.P.] does not agree to the issuance of the Order of Protection.
>
> i. The following relief is necessary to bring about a cessation of the violence or the threat of violence.

(Appellant's App. Vol. II, p. 9). H.P. contends that these findings were insufficient because they merely track the statutory requirements for issuing a protective order, they do not adequately disclose the basis for the trial court's determination, and they are based on a form order which H.P. argues may never be sufficiently specific to support the issuance of a protective order.

[16] In *Hanauer v. Hanauer*, 981 N.E.2d 147, 148 (Ind. Ct. App. 2013), Husband appealed the trial court's grant of a protective order to Wife, who had alleged in part that she had been a victim of domestic or family violence. Husband challenged the evidence supporting the protective order. The *Hanauer* court noted that

> "[a] finding that domestic or family violence has occurred sufficient to justify the issuance of [a protective order] . . . means that a respondent represents a credible threat to the safety of a petitioner or a member of a petitioner's household." [Ind. Code] § 34–26–5–9(f). "Domestic or family violence" is defined in relevant part as "the occurrence of at least one (1) of the following acts committed by a family or household member: (1) Attempting to cause, threatening to cause, or causing physical

> harm to another family or household member[; or] (2) Placing a family or household member in fear of physical harm. I.C. § 34–6–2–34.5.

Id. at 149. In support of the issuance of the protective order, the trial court had found that "domestic or family violence, [or] stalking[] . . . occurred sufficient to justify the issuance of [the Protective Order]" and that Husband "represents a credible threat to the safety of [Wife] . . . or a member of [Wife's] household." *Id*. Although these findings were not extensive and simply tracked the statutory requirements for obtaining a protective order based on domestic or family violence, the Hanauer court concluded that, not only did the evidence support the findings, but also that the findings entered supported the issuing of the protective order. In addition, in *Fox v. Bonam*, 45 N.E.3d 794, 799 (Ind. Ct. App. 2015), this court upheld a trial court's determination that stalking had occurred, even though the trial court did not specify in its findings which of the five separate incidents of harassment alleged formed the basis for the issuing of the protective order.

[17] We agree with H.P that the findings entered by the trial court here mirror the language of the protective order statute, as set out in detail below. However, the trial court's findings are indistinguishable in character from those entered in *Hanauer* where we concluded the findings were sufficient to uphold the entry of a protective order. As was the case in *Hanauer*, the trial court's findings, while not detailed, adequately enlighten us as to the grounds for its decision such that we may conduct a meaningful appellate review of the evidence as H.P.

requests. In light of *Fox*, we cannot conclude that the trial court's failure to specify which of the allegations contained in A.K.'s petition for the protective order formed the basis for its determination rendered its findings deficient. Accordingly, we decline H.P.'s request to reverse or to remand for the entry of further findings to support the protective order at issue here.

[18] As to H.P.'s argument that a trial court's use of a form order may never be adequate to fulfill its duty to enter special findings of fact and conclusions thereon, we observe the form which provided the basis for the trial court's order, Form Order OJA-PO-0113, was developed pursuant to our legislature's directive to the Office of Judicial Administration (OJA) to develop and adopt "an order for protection, including . . . orders issued under [Indiana Code section 34-26-5][.]" I.C. § 34-26-5-3(a)(1)(B)(i). The OJA is also required to "provide the forms under subdivision (1) to the clerk of each court authorized to issue the orders." I.C. § 34-26-5-3(a)(2). H.P. offers no authority directing us that the trial court's use of language from Form Order OJA-PO-0113, the implementation of which is statutorily authorized, was improper, and, as we have already concluded, the trial court's findings entered in this case based on the form were adequate to disclose the basis for its determination. As such, we find no error in the level of specificity of the trial court's findings of fact and conclusions thereon entered in support of its protective order.

II. *Sufficiency of the Evidence*

[19] H.P. challenges the evidence supporting the protective order. Before addressing the merits of H.P.'s claims, we pause to address the state of the record before

us. H.P. did not include in her Appendix copies of A.K.'s petition for the protective order, the exhibits A.K. filed along with her petition, A.K.'s March 5, 2021, submission of additional exhibits, or H.P.'s own March 29, 2021, response to A.K.'s petition and accompanying exhibits. Indiana Appellate Rule 50(A)(2)(f) provides that an appellant's appendix "shall contain" copies of "pleadings and other documents from the Clerk's Record in chronological order that are necessary for resolution of the issues raised on appeal[.]" H.P.'s failure to include these documents impeded our review. Pursuant to Indiana Evidence Rule 201(b)(5) and (d), we take judicial notice of those documents to inform our understanding of the allegations contained in A.K.'s petition. However, in assessing the evidence supporting the protective order, we do not rely on the substance of any of the parties' exhibits submitted prior to the hearings other than those which were admitted into evidence at the hearing or the substance of which was provided through testimony.

[20] A.K. petitioned for a protective order 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* I.C. § 34-26-5-1(1-2). "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." I.C. § 34-26-5-2(b). Indiana Code section 34-26-5-9(g) provides that "[a] finding that . . . 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 . . . 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."

[21] A.K. alleged in her petition, and the trial court concluded, that H.P. had committed repeated acts of harassment against A.K. "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. The use of the term "repeated" in Indiana's anti-stalking and harassment statutes means "more than once." *R.W. v. J.W.*, 160 N.E.3d 195, 203 (Ind. Ct. App. 2020). "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). The statute 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." I.C. § 34-6-2-51.5(b).

[22] Here, by failing to have most of the exhibits she relied upon in support of her petition admitted into evidence at the hearing, we agree with H.P. that A.K. failed to support many of the allegations contained in her petition for a protective order. However, A.K. did show through her testimony that she had

a strained relationship with H.P. and that after she had terminated contact with H.P., which in effect terminated H.P.'s contact with her grandchildren, H.P. called A.K. on February 27, 2021, and cursed at her. Around that time, a truck that A.K. recognized as H.P.'s husband's drove by her house. H.P. also contacted A.K. through the "Sweetness Sarah" social media profile and told her, "Fuck you bitch," and she contacted Horsley through social media referencing A.K. and using menacing language toward Horsley. (Tr. p. 25). This was more than one instance of aggressive and threatening behavior occurring after A.K. had cut off contact with H.P. which we conclude would cause a reasonable person distress and which did, in fact, cause A.K. distress.

[23] In contending otherwise, H.P. argues that there is no evidence supporting A.K.'s allegations of harassment by H.P. or that H.P.'s actions constituted a present threat to A.K. This argument ignores the testimony recited above regarding H.P.'s February 27, 2021, call to A.K., H.P.'s messages to Horsley, H.P.'s obscene message to A.K. though the "Sweetness Sarah" account, and evidence that A.K. recognized the truck that drove by her house from having seen it previously. A.K. characterized H.P.'s conduct as nonstop, and H.P.'s call to A.K. and the truck drive-by happened only days before A.K. filed her petition and approximately three months before the hearing, from which it was reasonable for the trial court to conclude that H.P. continued to present a danger to A.K. A.K. testified that H.P. did these things, and H.P. denied that she did. H.P.'s argument directing our attention to evidence which she contends shows these incidents did not occur is not persuasive given our

standard of review which obligates us to affirm unless there is no evidence supporting the trial court's determination and to refrain from reweighing the evidence or reassessing witness credibility. *Fox*, 45 N.E.3d at 798; *Bokori*, 70 N.E.3d at 443.

[24] H.P.'s argument that A.K. failed to show that a reasonable person would suffer emotional distress from her actions or that A.K. actually suffered emotional distress meets the same fate. H.P. contends "[t]here was no such evidence." (Appellant's Br. p. 25). However, A.K. testified that H.P.'s conduct was "crazy" and "not okay[.]" (Tr. p. 7). A.K. also explained that she was tired of "being bullied" by H.P. and felt as though H.P. was attempting to provoke her into a fight. (Tr. p. 24). We conclude that this was ample support for the trial court's conclusion that a reasonable person would have been emotionally distressed by H.P.'s behavior and that A.K. actually experienced that distress.

[25] Lastly, H.P. contends that the trial court's issuing of the protective order "was primarily based upon the report made to CPS" and that the report "cannot be the basis for issuing a protective order" because it is "statutorily or constitutionally protected activity" within the meaning of Indiana Code section 34-6-2-51.5(b). (Appellant's Br. p. 20). We do not credit this argument for several reasons, the first of which is that, although the trial court asked H.P. about her report and expressed concerns about it, the trial court's observation from the bench that it must determine the line between a valid report and harassment indicates that it had not yet made any conclusions about the issue. Moreover, the trial court's findings of fact and conclusions thereon do not

mention the CPS report as a basis for its decision, and we have not relied upon it in concluding that sufficient evidence supported the protective order. In addition, we do not address the issue further, as H.P.'s counsel acknowledged at the hearing that such reports may constitute harassment, an acknowledgement which, without expressing any opinion on its merits, we conclude prohibits H.P. from taking a contrary position on appeal.

CONCLUSION

[26] Based on the foregoing, we conclude that the trial court's factual findings were sufficiently specific and that the evidence supported the issuing of the protective order.

[27] Affirmed.

[28] Robb, J. and Molter, J. concur