

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

T.S.,
Appellant-Respondent,

v.

A.S., by next friend, H.J.,
Appellee-Petitioner.

July 5, 2022

Court of Appeals Case No.
21A-PO-2832

Appeal from the
Lake Superior Court

The Honorable
Bruce D. Parent, Judge

Trial Court Cause No.
45D11-2110-PO-1347

Molter, Judge.

- [1] Indiana Code sections 34-26-5-2(c) and 35-42-4-13 enable a parent to obtain a protective order for a child after someone has engaged in a course of conduct involving repeated or continuing contact with the child that is intended to prepare the child for sexual activity. H.J. obtained an ex parte protective order

under these provisions on behalf of her eleven-year-old daughter, A.S., against A.S.'s twenty-four-year-old half-brother, T.S., based on the allegation that eight years earlier he had "engaged in sexually inappropriate behavior" with an eight-year-old child (C.L.) and a nine-year-old child (G.B.). Appellant's App. Vol. II at 13. T.S. then objected and requested a hearing, at which H.J. conceded there has never been any allegation that T.S. acted inappropriately towards A.S.; that the Indiana Department of Child Services ("DCS") concluded the allegation regarding G.B. was unsubstantiated, and no charges were filed; that C.L.'s allegation was actually against T.S.'s father rather than T.S.; and that T.S. has never been charged or otherwise accused of inappropriate conduct towards C.L. H.J. did not offer any evidence that T.S. engaged in a course of conduct intended to prepare A.S. for sexual activity.

- [2] The trial court lamented that, outside of divorce proceedings, it had no ability to investigate H.J.'s allegations and concerns, and it explained it would enter the protective order anyway simply to err on the side of caution. But the protective order statutes do not authorize the trial court to limit T.S.'s liberty merely in an abundance of caution. Because the trial court did not make any findings required by the protective order statutes, and there was insufficient evidence to support application of the statutes in any event, we reverse and remand with instructions to vacate the protective order.

Facts and Procedural History

- [3] H.J. and J.S. were previously married and are the biological parents of A.S. T.S. is the biological son of J.S but not H.J. The marriage between H.J and J.S. was dissolved sometime around 2017.
- [4] On June 10, 2013, when H.J. and J.S. were still married, there was an allegation that T.S., who was sixteen at the time, inappropriately looked down his stepsister G.B.'s underwear when she was nine years old. G.B. is also H.J.'s daughter. DCS investigated the incident and concluded it was unsubstantiated. T.S. was never charged with a crime.
- [5] In July 2021, G.B.'s friend, C.L. reported that J.S. had acted inappropriately toward C.L. around the same time the allegations concerning G.B. were reported back in 2013. DCS investigated the allegations and found them to be unsubstantiated. No charges were filed related to this incident.
- [6] The dissolution decree between H.J. and J.S. ordered that T.S. was not to be left alone with A.S. or have her overnight. Since the dissolution decree, A.S. and T.S. have spent time together as a family at family functions and have a good sibling relationship. All parties agree that no allegations have ever been made that T.S. acted inappropriately, in any way, toward A.S. Additionally, consistent with the dissolution decree, T.S. is never alone with A.S.
- [7] On October 6, 2021, H.J. filed a petition for a protective order on behalf of A.S., alleging that T.S. had engaged in a course of conduct involving repeated or continuing contact with a child that is intended to prepare or condition a

child for sexual activity. Appellant’s App. Vol. II at 11–17. In her petition, H.J. alleged that T.S. had “engaged in sexually inappropriate behavior” with G.B. in 2013 and “committed other sexual acts against [C.L.] around the same time frame.” *Id.* at 13. On October 8, 2021, the trial court issued an ex parte order of protection prohibiting T.S. from being in contact with A.S. In issuing the ex parte order, the trial court made the following findings:

- a. The Petitioner has shown, by a preponderance of the evidence, that a sex offense or a course of conduct involving repeated or continuing contact with the Petitioner that is intended to prepare or condition the Petitioner for sexual activity (as defined in Ind. Code § 35-42-4-13) has occurred sufficient to justify the issuance of this Order.
- b. This order does protect an intimate partner or child.
- c. The Respondent represents a credible threat to the safety of the Petitioner or a member of the Petitioner’s household.
- d. The following relief is necessary to bring about a cessation of the violence or the threat of violence.

Id. at 6.

- [8] T.S. filed an objection to the ex parte order and requested a hearing. A hearing was held, and after hearing evidence, the trial court found that the protective order should remain in place and denied T.S.’s motion to set aside the ex parte order, stating, “I’m going to err on the side of caution with an eleven-year-old girl.” Tr. Vol. II at 25. T.S. now appeals.

Discussion and Decision

- [9] Protective orders are like injunctions, and therefore, before granting a protective order, the trial court must make special findings of fact and conclusions of law. *Hanauer v. Hanauer*, 981 N.E.2d 147, 148 (Ind. Ct. App. 2013) (citing Ind. Trial Rule 52(A)(1)). We apply a two-tiered standard of review: we first determine whether the evidence supports the findings, and then we determine whether the findings support the order. *Id.* at 149. In deference to the trial court's proximity to the issues, we disturb the order only when there is no evidence supporting the findings or the findings fail to support the order. *Koch Dev. Corp. v. Koch*, 996 N.E.2d 358, 369 (Ind. Ct. App. 2013), *trans. denied*.
- [10] 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. We do not defer to conclusions of law, however, and evaluate them *de novo*." *Mysliwy v. Mysliwy*, 953 N.E.2d 1072, 1076 (Ind. Ct. App. 2011) (citation omitted), *trans. denied*.
- [11] A.S. did not file an appellees' brief, and we cannot undertake the role of developing arguments for her. *Jenkins v. Jenkins*, 17 N.E.3d 350, 351 (Ind. Ct. App. 2014). Instead, when there is no appellee's brief, we 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).

To determine 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.

[12] T.S. argues the trial court erred in granting the protective order because the evidence was insufficient to support the allegations in A.S.'s petition. We agree. The trial court explained it was unable to investigate H.J.'s allegations and was simply entering the protective order in an abundance of caution, but the relevant statutes do not permit that. Instead, to enter the protective order under Indiana Code sections 34-26-5-2(c) and 35-42-4-13 as H.J. requested, the trial court had to find (among other things) that T.S. had engaged in a course of conduct involving repeated or continuing contact with A.S. that was intended to prepare A.S. for sexual activity.

[13] The trial court did not make any such findings, and there was no evidence to support such findings. Just the opposite, H.J. acknowledged there was no allegation that T.S. had ever acted inappropriately with A.S., let alone repeatedly. Even as to G.B., the allegation was eight years old, and the evidence was that DCS concluded the allegation was unsubstantiated. As to C.L., the allegation was against J.S., not T.S.

[14] We have noted the “significant ramifications of an improperly granted protective order[,]” which can pose “a considerable threat to the respondent's liberty.” *Barger v. Barger*, 887 N.E.2d 990, 993-94 (Ind. Ct. App. 2008). “For example, at the state level, violation of the trial court's protective order is ‘punishable by confinement in jail, prison, and/or a fine.’” *Id.* at 993 (quoting

Ind. Code § 34-26-5-3). Thus, an improperly granted protective order may pose a considerable threat to the respondent's liberty. Because T.S. established prima facie error in the granting of the protective order, we reverse the trial court's order and remand with instructions to vacate the protective order.

[15] Reversed and remanded.

Mathias, J., and Brown, J., concur.