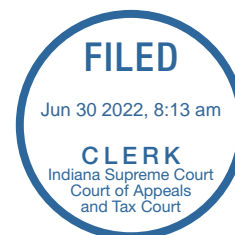


MEMORANDUM DECISION

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

B.T.,
Appellant-Respondent,

v.

S.B.,
Appellee-Petitioner.

June 30, 2022

Court of Appeals Case No.
21A-PO-2269

Appeal from the Lawrence Circuit
Court

The Honorable Catherine Stafford,
Judge

Trial Court Cause No.
47C01-2107-PO-788

Pyle, Judge.

Statement of the Case

- [1] B.T. (“B.T.”) appeals the trial court’s issuance of an order of protection against him and in favor of S.B. (“S.B.”), K.T. (“K.T.”), and J.C. (“J.C.”). B.T. argues

that there was insufficient evidence to support the issuance of the protective order against him and in favor of S.B., K.T., and J.C. Concluding that there is sufficient evidence to support the issuance of the protective order in favor of S.B., but insufficient evidence to support the issuance of the protective order in favor of K.T. and J.C., we affirm the trial court’s order in part and reverse it in part.

[2] We affirm in part and reverse in part.

Issue

Whether there is sufficient evidence to support the trial court’s issuance of a protective order against B.T.

Facts

[3] B.T. and K.T., who are the parents of their adult daughter S.B., began divorce proceedings in 2017. B.T. and K.T. co-owned a dance studio (“the Dance Studio”) where S.B. worked part-time. B.T. and K.T. agreed to attempt to sell the Dance Studio and split the proceeds. Around the time of the divorce proceedings, B.T. gave S.B. a few of his gold coins for S.B. to appraise at the jewelry store (“the Jewelry Store”) where she worked. The divorce proceedings were contentious, leading to a breakdown of S.B. and B.T.’s relationship.

[4] In early 2021, B.T. began texting and calling S.B. on a regular basis. In addition, B.T. began calling, driving by, and entering the Jewelry Store. B.T., through his counsel, asked S.B. to return B.T.’s gold coins as well as other unspecified items belonging to B.T. On June 2, 2021, S.B. mailed a letter to

B.T.'s counsel along with some of the items that B.T. had requested S.B. to return. In S.B.'s letter, she asked B.T. to "remove [S.B.] from his life completely, and that further contact would be construed as harassment[.]" (Tr. Vol. 2 at 7). S.B. also informed B.T.'s counsel that she did not possess any of the other objects that B.T. had requested. Later that day, B.T. called S.B., but S.B. did not answer.

[5] Sometime after receiving S.B.'s letter, B.T. drove to S.B.'s house, but she was not initially home. When S.B. arrived back at her house, B.T. approached S.B. and asked if they could talk. S.B. replied, "only if it was [with] kind words[.]" (Tr. Vol. 2 at 9). B.T. "cussed [S.B.] out" and left S.B.'s house. (Tr. Vol. 2 at 9).

[6] On June 14, 2021, B.T. entered the Jewelry Store and asked S.B.'s manager about the location of his gold coins. S.B.'s manager informed B.T. that there were no gold coins in the inventory of the store. The following month, on July 7, 2021, B.T. called the Jewelry Store, and S.B. answered. S.B. told B.T. that he was not supposed to contact her. Later that day, B.T. texted S.B. and demanded the return of his gold coins by July 12, 2021, and he threatened to call the police if she had not returned the coins by that date.

[7] On July 8, 2021, S.B. filed with the trial court a petition for an order of protection. S.B.'s petition alleged that S.B. was a victim of domestic or family violence, stalking, and repeated acts of harassment. S.B.'s petition requested that the order of protection include K.T. and J.C., who was S.B.'s boyfriend.

However, the following day, S.B. sent a letter to the trial court, which the court clerk file stamped and included in the trial court's record. In S.B.'s letter, she informed the trial court that she wanted to remove K.T. and J.C. from her protective order petition.

[8] On July 12, 2021, B.T. called the Jewelry Store once more. In addition, B.T. called the police to report that S.B. had stolen his gold coins, and as a result, a police officer spoke with S.B. In late July, the trial judge for the protective order case recused, resulting in the appointment of a special judge.

[9] In August 2021, the trial court held a hearing on S.B.'s petition. During this hearing, the trial court heard the facts as set forth above. Additionally, S.B., who was representing herself pro se, testified that she felt intimidated by B.T. because "[B.T.] like[d] to be threatening, [B.T.] like[d] to make himself aggressive towards [S.B.,] and [B.T.] [had] refuse[d] to back down[.]" (Tr. Vol. 2 at 10). Additionally, S.B. testified that when B.T. acted in this manner, she would "ask [B.T.] to leave and [B.T.] wo[uld]n't." (Tr. Vol. 2 at 10). S.B. also testified that B.T. had threatened her with "all kinds of verbal threats[.]" (Tr. Vol. 2 at 10). S.B. further explained that these verbal threats had been directed at "[her] personal mental health, to [her] well-being, [and] to [her] job[.]" (Tr. Vol. 2 at 10). S.B. admitted that B.T.'s threats were not threats of physical violence.

[10] Additionally, during direct examination of B.T., B.T.'s counsel began a line of questioning relating to B.T.'s health, age, and cancer diagnosis, and S.B.

objected. S.B. argued that this line of questioning was irrelevant. B.T. argued that it was relevant because “a reasonable person would not feel intimidated by a gentleman who is elderly . . . [and] in cancer treatment with limited health and limited mobility.” (Tr. Vol. 2 at 13). The trial court sustained S.B.’s objection and stated, “I believe the allegations are stalking and harassment, which do not contain any component of physical violence, nor has [S.B.] alleged any[.]” (Tr. Vol. 2 at 13).

[11] The parties were unable to finish testimony during this August hearing, and the trial court scheduled a second hearing for September 2021. Immediately after the August hearing concluded, B.T. made a video call to S.B., but S.B. did not answer.

[12] During the September 2021 hearing, B.T. admitted that he had called S.B. multiple times over the last few months, but he claimed that the calls were accidental “butt-dial[s][.]” (Tr. Vol. 2 at 31). B.T. further testified that he had not called, texted, or met with S.B. because he had been told not to contact S.B.

[13] The trial court issued an order of protection in favor of S.B. and against B.T. The order of protection provided that S.B. “ha[d] shown, by a preponderance of the evidence, that stalking ha[d] occurred.” (App. Vol. 2 at 20). In addition, the trial court’s order enjoined B.T. from “threatening to commit or committing acts of stalking” against S.B., K.T., and J.C. (App. Vol. 2 at 20). The trial court further ordered that B.T. was “prohibited from harassing, annoying, telephoning, contacting, or directly or indirectly communicating with [S.B.]”

(App. Vol. 2 at 20). Finally, the trial court ordered that B.T. was excluded from both S.B. and J.C.'s homes as well as the Dance Studio on the days that S.B. worked there.

[14] B.T. now appeals.

Decision

[15] B.T. argues that there was insufficient evidence to support the issuance of an order of protection against him in favor of S.B., K.T., and J.C. Before we address B.T.'s arguments, we note that S.B. did not file an Appellee's brief. When an appellee fails to submit an appellate brief, "we need not undertake the burden of developing an argument on the [A]ppellee's behalf." *Front Row Motors, LLC v. Jones*, 5 N.E.3d 753, 758 (Ind. 2014) (quoting *Trinity Homes, LLC v. Fang*, 848 N.E.2d 1065, 1068 (Ind. 2006)). Rather, "we will reverse the trial court's judgment if the appellant's brief presents a case of prima facie error." *Front Row Motors*, 5 N.E.3d at 758 (quoting *Trinity Homes*, 848 N.E.2d at 1068). "Prima facie error in this context is defined as, at first sight, on first appearance, or on the face of it." *Front Row Motors*, 5 N.E.3d at 758 (internal quotation marks and citation omitted).

[16] B.T. argues that there was insufficient evidence to support the issuance of the protective order against him and in favor of S.B., K.T., and J.C. When reviewing the sufficiency of the evidence supporting a decision to issue a protective order, we do not reweigh the evidence or judge the credibility of witnesses. *A.G. v. P.G.*, 974 N.E.2d 598, 598 (Ind. Ct. App. 2012). "We look

only to the evidence of probative value and reasonable inferences that support the trial court’s judgment.” *Id.*

[17] Civil protective orders are governed by the Indiana Civil Protection Order Act (“CPOA”)[.]” *Costello v. Zollman*, 51 N.E.3d 361, 364 (Ind. Ct. App. 2016), *trans. denied*. See IND. CODE §§ 34-26-5-1 *et seq.* Our legislature has explained that the CPOA “shall be construed to promote the . . . (1) protection and safety of all victims of domestic or family violence in a fair, prompt, and effective manner; (2) protection and safety of all victims of harassment in a fair, prompt, and effective manner; and (3) prevention of future domestic, family violence, and harassment.” I.C. § 34-26-5-1.

[18] For purposes of the CPOA, “domestic and family violence” includes “stalking.” See I.C. § 34-6-2-34.5. “Stalking” is defined 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.” I.C. § 35-45-10-1. “Harassment” is defined as “conduct directed toward a victim that includes but is not limited to repeated or continuing impermissible contact that would cause a reasonable person to suffer emotional distress and that actually causes the victim to suffer emotional distress.” I.C. § 35-45-10-2. “Impermissible contact” includes, among other things, “[f]ollowing or pursuing the victim.” I.C. § 35-45-10-3. The term “repeated” as used in the anti-stalking statute “means more than once.” *Falls v. State*, 131 N.E.3d 1288, 1290 (Ind. 2019) (internal quotation

marks and citations omitted). Both stalking and harassment do “not include statutorily or constitutionally protected activity.” I.C. §§ 35-45-10-1; 35-45-10-2.

[19] We first review the evidence relating to the issuance of the protective order in favor of S.B. Here, the trial court determined that S.B. had met her burden of showing that B.T. had committed stalking. B.T. argues that “[a] single text message cannot support a finding of stalking under Indiana law.” (B.T.’s Br. 8). However, the record contains much more than a single text message sent from B.T. to S.B. S.B. testified, and B.T. admitted, that there were multiple instances of contact between B.T. and S.B. after S.B. had asked B.T. to cease contact. For example, S.B. testified that B.T. had made multiple phone calls, texts, and a video call to S.B. after she had asked B.T. to cease contact. Indeed, one of these contacts occurred after the first protective order hearing. In addition, S.B. testified that B.T. had driven to her home in order to speak with her without her consent after she had asked B.T. to cease contact.

[20] Ultimately, B.T.’s argument amounts to nothing more than a request to reweigh the evidence and the trial court’s credibility determinations. We decline to do so and affirm the trial court’s issuance of an order of protection against B.T. and in favor of S.B.¹

¹ B.T. also contends that the trial court erred when it sustained S.B.’s objection to B.T.’s counsel’s line of questioning related to B.T.’s health, age, and cancer diagnosis. The trial court ruled that B.T.’s line of questioning relating to B.T.’s ability to be physically violent towards S.B., as shown by health, age, and cancer diagnosis, was irrelevant. Ultimately, the trial court’s order of protection found that S.B. had proven

- [21] Next, we review the evidence relating to the issuance of the protective order in favor of K.T. and J.C. B.T. argues that the trial court erred when it included K.T. and J.C. in the protective order. We agree.
- [22] Our review of the record reveals that S.B. filed a letter with the trial court the day after she had filed her protective order petition. In her letter, S.B. had asked the trial court to remove K.T. and J.C. from her petition. During the hearing, S.B. presented no evidence explaining why the order of protection should be extended to include K.T. or J.C. Because there was a lack of evidence, let alone sufficient evidence, to support the issuance of the protective order in favor of K.T. and J.C., we reverse the part of the trial court's order relating to K.T. and J.C.
- [23] Affirmed in part and reversed in part.

May, J., and Brown, J., concur.

by a preponderance of the evidence that B.T. committed the act of stalking, which does not require evidence of physical violence. Thus, even if the trial court erred by sustaining the objection to B.T.'s line of questioning, any error was harmless. *See In re Des.B.*, 2 N.E.3d 828, 834 (Ind. Ct. App. 2014) (establishing that errors in the admission of evidence are to be disregarded as harmless error unless they affect the substantial rights of a party).