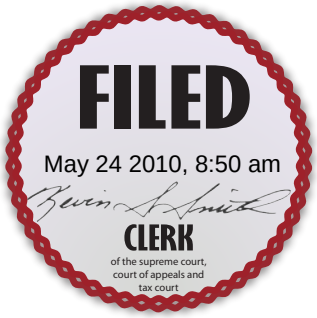

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IN THE
COURT OF APPEALS OF INDIANA

TONY VAN TASSEL,	)	
	)	
Appellant-Respondent,	)	
	)	
vs.	)	No. 29A05-0910-CV-609
	)	
THERESA REEVES,	)	
	)	
Appellee-Petitioner.	)	

APPEAL FROM THE HAMILTON SUPERIOR COURT
The Honorable Gail Z. Bardach, Presiding Judge
Cause No. 29D06-0907-PO-497

May 24, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

NAJAM, Judge

STATEMENT OF THE CASE

Tony Van Tassel appeals the trial court's order for protection under the Civil Protection Order Act in favor of Theresa Reeves, following a hearing. Van Tassel presents a single issue for review, namely, whether the evidence supports the issuance of the protection order under the Act. We conclude that Van Tassel's appeal amounts to a request that we reweigh the evidence, which we cannot do. As such, we affirm.

FACTS AND PROCEDURAL HISTORY

Van Tassel and Reeves were in a ten-year relationship, including a sexual relationship. They worked together in Noblesville beginning April 2000 and lived together in Van Tassel's home in Fishers until 2009. Reeves' minor daughter also lived with them. On June 25, 2009, Van Tassel asked Reeves and her daughter to leave the home. He assisted them in finding a hotel and a rental car. At that point, Reeves no longer had keys to access the house, and some of her personal property remained in the home.

On July 9, Reeves filed a pro se petition for an order for protection and request for a hearing under the Civil Protection Order Act ("the Act"). The petition listed five incidents as the bases for Reeves' request for a protective order:

> June-July/09 . . . Tony contacts me 5-10 times daily. Threatens, yells, [i]ntimidation, lies and just plain harrasses [sic] me. . . .
>
> April [']09 . . . Threatened me with his gun, to kill me. Said he would be better off if I was [sic] dead. . . .
>
> May [']09 . . . Tony was angry yelling and told me to get a bag and go stay somewhere (my minor child included)[.] He locked the doors (securely) and I couldn't get back in. . . .

> Spring [']05 . . . Threatened me with his gun to kill me. I was lying on the couch and he put his gun in my face and threatened to kill me. . . .
>
> July [']04 . . . We were having friends over for cocktails. I was feeling ill and went to our private restroom. I was getting sick, had my new phone and Tony came in the doorway of the restroom, blocked my exit. He said all he wanted to do was get my phone so I didn't get sick all over it, block [sic] me in the restroom so I didn't get sick on the carpet. But I felt trapped, confined in a small space, so I tried to get out of the restroom, and couldn't. I tried to push past, shove him, move him but he wouldn't let me out. He punched me so hard in the side of my face that I flew backwards ripped the shower curtain and rod down, hit my head on the tub spout, leaving about a 3" gash on the left side of my head, just above the temple. Then he sat up in the chair in our bedroom with the door locked blocking my exit. He had all of the phones, cell & home along with his gun in his lap. He wouldn't let me leave or call for help.

Appellant's App. at 58, 62. On the same date, the trial court entered an ex parte order for protection as to Reeves and her minor daughter. The trial court also set the matter for a hearing on July 27.

On July 20, Van Tassel filed a motion to continue the hearing and a motion to dismiss the protective order. The trial court granted the motion to continue the hearing, resetting the same for August 14. At the August 14 hearing, Van Tassel appeared by counsel and Reeves appeared pro se. After hearing testimony from both parties and a single witness called by Van Tassel, the court ordered that the "Ex Parte Order for Protection issued on the 9th day of July, 2009[,] shall remain in full force and effect until the 9th day of July, 2011." Id. at 4. Van Tassel filed a motion to correct error, which the trial court denied. Van Tassel now appeals.

DISCUSSION AND DECISION

Van Tassel contends that the evidence is insufficient to support the court's order for protection against him and in favor of Reeves on any of the grounds alleged in Reeves' petition. Initially, we note that Reeves did not file an appellee's brief. When the appellee fails to submit a brief, we need not undertake the burden of developing an argument on the appellee's behalf. A.S. v. T.H., 920 N.E.2d 803, 805 (Ind. Ct. App. 2010). Rather, we will reverse the trial court's judgment if the appellant's brief presents a case of prima facie error. Id. Prima facie error in this context is defined as "at first sight, on first appearance, on the face of it." Id. (citation omitted). When the appellant is unable to meet this burden, we will affirm. Id. at 806.

The Act authorizes "a person who is or has been a victim of domestic . . . violence" to file a petition for an order for protection. Ind. Code § 34-26-5-2. The respondent in such an action may be a person with whom the petitioner had been in a dating or sexual relationship. See I.C. § 34-6-2-44.8(a)(2), (3). The petition for protection may be sought against a respondent who has committed (1) an act of domestic violence against the petitioner, or (2) "stalking," as defined in the criminal code. I.C. § 34-26-5-2. "Domestic violence" means "the occurrence of" an act by the respondent "attempting to cause, threatening to cause, or causing physical harm" to the petitioner, or placing the petitioner "in fear of physical harm." I.C. § 34-6-2-34.5. Pursuant to the Act, "domestic violence . . . includes stalking (as defined in IC 35-45-10-1)." Id. Upon a showing of domestic violence "by a preponderance of the evidence, the trial court 'shall grant the relief necessary to bring about a cessation of the violence or the threat of

violence.'" Moore v. Moore, 904 N.E.2d 353, 358 (Ind. Ct. App. 2009) (quoting I.C. § 34-26-5-9(f)).

To obtain an order for protection under the Act, the petitioner must establish by a preponderance of the evidence at least one of the allegations in the petition. Tons v. Bley, 815 N.E.2d 508, 511 (Ind. Ct. App. 2004). Indiana's legislature has directed the courts to "construe" the Act so as "to promote the (1) protection and safety of all victims of domestic or family violence in a fair, prompt, and effective manner; and (2) prevention of future domestic and family violence." Ind. Code § 34-26-5-1. In determining the sufficiency of the evidence on appeal, we neither weigh the evidence nor resolve questions of credibility. Id. We look only to the evidence of probative value and reasonable inferences that support the trial court's judgment. Id.

Here, Reeves requested an order for protection under the Act on the grounds that Van Tassel attempted or threatened to cause physical harm to her, did cause physical harm to her, or placed her in fear of physical harm. Van Tassel argues that the evidence is insufficient to support the trial court's order for protection based on any of the five allegations listed in Reeves' petition. Again, proof of only one allegation was required for the trial court to grant Reeves' petition. See id.

In her petition, Reeves alleged that in the Spring of 2005 and again in April 2009 Van Tassel threatened to kill her with his gun. Reeves could not remember the details of these incidents at the hearing, such as whether she was lying on the couch when they happened, but she was clear that on two occasions Van Tassel threatened violence with a

gun. On one occasion he asked her to shoot him and on the other occasion he "put his gun in [her] face and threatened to kill [her]." Transcript at 10.

Van Tassel argues that the evidence is insufficient to support the order with regard to the two allegations that he threatened to kill her. He points out that Reeves' testimony at the August 14 hearing contradicts her petition to the extent that her petition alleges two times that he allegedly threatened to kill Reeves, yet she testified that on one of those occasions Van Tassel asked her to shoot him. She also testified that she could not remember which incident happened on which date. Nevertheless, such was a question of fact for the trial court to determine. Van Tassel's argument on appeal amounts to a request that we reweigh the evidence, which we cannot do. See Tons, 815 N.E.2d at 511. As such, Van Tassel has not shown that the trial court erred in finding that Reeves met her burden of showing that he threatened to cause Reeves physical harm.[1]

Van Tassel also contends that the trial court should not have issued a protective order as to Reeves' minor daughter because "the Petition failed to meet her burden of proof with respect to any allegation concerning entry of a protective order for her child." Appellant's Brief at 11. But upon finding a preponderance of evidence of domestic violence with regard to Reeves, the trial court was authorized to issue a protective order as to Reeves and "each designated family or household member." Ind. Code § 34-26-5-9(b)(1). Reeves' daughter is such a family or household member. Under Section 34-26-5-9(b)(1), Reeves need not have made any allegations regarding her child. Therefore, Van Tassel's argument on this issue must fail.

[1] Because this determination supports the trial court's issuance of the protective order, we need not consider Van Tassel's arguments regarding the remaining allegations in Reeves' petition. See Tons, 815 N.E.2d at 511.

Finally, Van Tassel argues that Reeves' primary motive for obtaining a protective order was her desire to have returned her personal property that remained at Van Tassel's home. We have already determined that the record contains sufficient evidence of domestic violence, namely, a threat to cause physical harm to Reeves, to support the trial court's entry of the order for protection. Van Tassel's argument is, again, merely a request that we reweigh the evidence. We will not do so. See id.

Affirmed.

VAIDIK, J., and BROWN, J., concur.