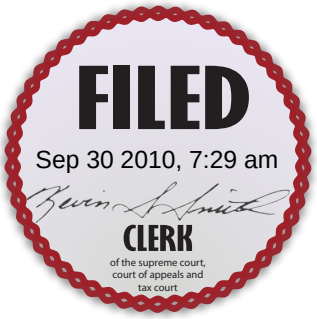

ATTORNEY FOR APPELLANT:

BRYAN LEE CIYOU
Ciyou & Dixon, P.C.
Indianapolis, Indiana

ATTORNEY FOR APPELLEE:

DENISE F. HAYDEN
Indianapolis, Indiana

IN THE
COURT OF APPEALS OF INDIANA

JOSEPH M. SHORTRIDGE,	)	
	)	
Appellant-Respondent,	)	
	)	
vs.	)	No. 55A01-0912-CV-595
	)	
ALICE SHORTRIDGE,	)	
	)	
Appellee-Petitioner.	)	

APPEAL FROM THE MORGAN SUPERIOR COURT
The Honorable G. Thomas Gray, Judge
The Honorable Brian H. Williams, Magistrate
Cause No. 55D01-0909-PO-543

September 30, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

MAY, Judge

Joseph Shortridge challenges an *ex parte* protective order Alice Shortridge obtained while Alice and Joseph were in the process of dissolving their marriage. As Joseph has demonstrated no prejudice from the errors he alleges, we affirm.

FACTS AND PROCEDURAL HISTORY

Alice sought and, on September 30, 2009, obtained an *ex parte* protective order that prohibited Joseph from committing or threatening certain acts toward Alice. On October 5, Joseph asked for an emergency hearing to challenge that order. The "emergency" Joseph alleged was that he was unable to work because the order directed him to stay away from Alice's place of employment, which was also Joseph's workplace: "Consequently, an emergency exist [sic] which requires this Court to have and [sic] emergency hearing, because Respondent will loose [sic] his job if this restriction is not lifted promptly." (App. at 17.)

On October 15, at Alice's request, the court amended the order by removing the provision that Joseph stay away from Alice's place of employment. A hearing was held November 24, 2009, after which the court declined to modify the protective order or grant other relief.

DISCUSSION AND DECISION

Ind. Code § 34-26-5-10 provides:

> (a) Except as provided in subsection (b), if a court issues:
>
> (1) an order for protection ex parte; or
>
> (2) a modification of an order for protection ex parte;
>
> and provides relief under section 9(b) of this chapter, upon a request by either party not more than thirty (30) days after service of the order or modification, the court shall set a date for a hearing on the petition. The hearing must be

> held not more than thirty (30) days after the request for a hearing is filed unless continued by the court for good cause shown. The court shall notify both parties by first class mail of the date and time of the hearing.
> (b) A court shall set a date for a hearing on the petition not more than thirty (30) days after the filing of the petition if a court issues an order for protection ex parte or a modification of an order of protection ex parte and:
>
> (1) a petitioner requests or the court provides relief under section 9(b)(3), 9(b)(5), or 9(b)(6) of this chapter; or
>
> (2) a petitioner requests relief under section 9(c)(2), 9(c)(3), or 9(c)(4) of this chapter.
>
> The hearing must be given precedence over all matters pending in the court except older matters of the same character.
> (c) In a hearing under subsection (a) or (b):
>
> (1) relief under section 9 of this chapter is available; and
>
> (2) if a respondent seeks relief concerning an issue not raised by a petitioner, the court may continue the hearing at the petitioner's request.

Joseph first asserts "procedural due process required under the state and federal constitutions was not afforded with the ex parte relief because the trial court did not set Mr. Shortridge's Hearing Request, and have the hearing, until fifty (50) days after filing for such." (Appellant's Br. at 12.) While we acknowledge the statute appears to reflect the legislature's intent to provide certain due process protections to persons subject to a protective order, we decline to adopt Joseph's apparent premise that a hearing set outside the thirty-day period is, without more, a deprivation of due process under either the Indiana or the United States constitution.

Nor has Joseph demonstrated he was prejudiced by the scheduling of the hearing outside the statutory period. We therefore cannot reverse on that ground. The "emergency" alleged in Joseph's Verified Response and Request for Emergency Hearing was that he was currently unable to work because he and Alice both worked at the same place and Joseph had

been ordered to stay away from Alice's place of employment. That emergency was resolved three days later when the court amended the protective order. Joseph has alleged no other prejudice to him because of the late scheduling of the hearing. As such, reversal is not required.

A deprivation of due process may amount to harmless error. *See, e.g.*, *In re T.W.*, 831 N.E.2d 1242, 1247 (Ind. Ct. App. 2005) (alleged failure of office of family and children to provide mother with notice of termination hearing at least ten days prior to hearing did not violate mother's due process rights where mother knew the date of the termination hearing, was present and represented by counsel, and did not show prejudice to her resulting from lack of notice); *Charnas v. Estate of Loizos*, 822 N.E.2d 181, 186 (Ind. Ct. App. 2005) ("even though we conclude that Charnas possesses a protected property interest, we find that she failed to demonstrate that she was prejudiced by the lack of a hearing to establish evidence of Loizos' different intent"); *U.S. Outdoor Adver. Co., Inc. v. Indiana Dept. of Transp.*, 714 N.E.2d 1244, 1261 (Ind. Ct. App. 1999) (appellants' due process claim did not require reversal where they did not show they were prejudiced), *trans. denied*.[1]

Joseph next argues he was deprived of due process because there was "no defined order to follow." (Appellant's Br. at 13.) The trial court's decision was memorialized in its

[1] Nor did Joseph object to the setting of the hearing outside the thirty-day period, and his allegation of error is waived for that reason. *See In re K.S.*, 750 N.E.2d 832, 834 n.1 (Ind. Ct. App. 2001) (issue of due process violation because of the trial court's non-compliance with statutory requirements governing pre-termination proceedings, specifically a permanency hearing, case plan and dispositional order, was waived because it was raised for the first time on appeal).

oral statement at the hearing:

> The Court will find a review, after a review of the evidence existing in this case and testimony and exhibits presented that the ex parte order of protection in this case is just and fitting in the situation and shall remain without modification and no other relief will be granted in this action.

(Tr. at 46.)

Joseph characterizes this statement as "the trial court apparently elected not to decide the issue, but revert back to Ex Parte Order #1." (Appellant's Br. at 13.) Joseph offers no explanation why the statement "[t]he court will find . . . the ex parte order of protection . . . shall remain without modification," (Tr. at 46), demonstrates the trial court's "elect[ion] not to decide the issue." (Appellant's Br. at 13.) Nor does Joseph explain why he is bringing this appeal if, as he asserts, the trial court rendered no decision.[2] The trial court decided the issue Joseph brought before it.

Joseph next asserts he "cannot determine whether to comply with Ex Parte Order #1, Ex Parte Order #2, or the in-court order." (Appellant's Br. at 13.) He asserts if he complies with Order #1, "which the trial court appeared to re-institute after the contested hearing, he cannot work." (*Id*.) If he complies with Order #2, he notes, he is in violation of Order #1. Joseph offers no explanation to support his apparent premise the court's reference to "the ex

[2] In his Notice of Appeal, Joseph says he is appealing

> the *final determination* of the Morgan County Superior Court I, from the bench trial, *an oral ruling was made,* and memorialized in the CCS, *all as a final order* denying the Petition to Dismiss and continuing the Exparte [sic] Protective Order in effect . . . *all as a final judgment and appealable order* in the matter.

(App. at 24) (emphasis added). We decline Joseph's invitation to hold the trial court "elected not to decide the issue." (Appellant's Br. at 13.)

parte order of protection in this case" was a reference to anything but Order #2, the amended *ex parte* order in force at the time of the hearing.[3] Nor does anything in the court's language indicate it was "reverting" to the original order.

It is apparent from the record that Joseph was fully able to determine which order to follow and that he had, in fact, followed Order #2. Order #1 prohibited Joseph from going to Alice's workplace, which was also his own. Following Joseph's emergency request and Alice's consent, Order #2 removed that workplace restriction. At the time of the hearing, Joseph was going to work. He testified at the hearing about which of his employer's parking lots he was currently using. When asked whether he sees Alice "regularly at work because you work in the same place," (Tr. at 41), he responded "Yes, I see her at work." (*Id*.) He testified at length in response to his own counsel's question "What do you do when you see your wife at work?" (*Id*. at 44.)

Joseph's argument he "cannot determine" which order to comply with is an invitation that we presume Joseph believed he was subject to an order that prohibited him from going to work, yet he intentionally violated the order and then testified at length at the hearing about

---

[3] We acknowledge the court, at the beginning of the hearing, said: "This comes before the Court today for a hearing on a request for an order of protection as an ex parte order issued September 30th," (Tr. at 4), which was the date Order #1 was issued. However, the court was likely reading from the docket entry regarding Joseph's motion for a hearing, or directly from Joseph's motion for a hearing, which was filed before the court issued Order #2 and thus would have requested a hearing regarding Order #1. By the time of the hearing, the court had amended that order, but Joseph apparently had not amended his motion for a hearing to reflect the amended *ex parte* order. We decline to hold this language indicated the court was "reverting" to the original order of September 30.

his own violation. We decline his invitation. Joseph's statements and actions demonstrate he was well aware which order was in effect at the time of the hearing and which order the trial court declined to modify. His argument to the contrary is without merit.

Joseph next asserts that because the court "did not issue what appears to amount to an order on the merits," he "does not know, for instance, if he is Brady disqualified." (Appellant's Br. at 14.) This, he says, puts him "at risk of violating 18 U.S.C. 922(g)(8) of federal firearms law." (*Id*. at 15.) That section provides in pertinent part:

> (g) It shall be unlawful for any person
> (8) who is subject to a court order that
> (A) was issued after a hearing of which such person received actual notice, and at which such person had an opportunity to participate;
> (B) restrains such person from harassing, stalking, or threatening an intimate partner of such person or child of such intimate partner or person, or engaging in other conduct that would place an intimate partner in reasonable fear of bodily injury to the partner or child; and
> (C)
> (i) includes a finding that such person represents a credible threat to the physical safety of such intimate partner or child; or
> (ii) by its terms explicitly prohibits the use, attempted use, or threatened use of physical force against such intimate partner or child that would reasonably be expected to cause bodily injury; . . .
> to ship or transport in interstate or foreign commerce, or possess in or affecting commerce, any firearm or ammunition; or to receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce.

18 U.S.C. 922(g)(8).

Both the original order and the amended order include the following language:

> Pursuant to 18 U.S.C. 922(g), once a respondent has received notice of this order and an opportunity to be heard, it is a federal violation to purchase,

> receive, or possess a firearm while subject to this order if the protected person is:
> (A) The respondent's current or former spouse.

(App. at 14, 22.) Joseph's argument he "does not know, for instance, if he is Brady disqualified" and is therefore "at risk of violating 18 U.S.C. 922(g)(8) of federal firearms law" is without merit.[4] The October 15, 2009, protective order, which the court declined to modify or revoke following the hearing on November 24, explicitly informed Joseph about that law and its application to him.

For the foregoing reasons, we affirm the amended protective order in question.

Affirmed.

ROBB, J., and VAIDIK, J., concur.

[4] For the same reasons, we reject Joseph's arguments that because he "does not have a clear order for analysis on appeal," (Appellant's Br. at 15), he has effectively been denied his right to appeal and he cannot determine the amount of time during which he must comply with the order. We suggest that if Joseph truly could not understand which order he was to follow, a request for clarification from the trial court might be a more prudent and efficient approach than complaining on appeal about the order's lack of clarity and his inability to frame issues.