MEMORANDUM DECISION

IN THE

Court of Appeals of Indiana

J.P.,

Appellant-Respondent

v.

F.L.,

Appellee-Petitioner

May 8, 2024

Court of Appeals Case No.
23A-PO-2505

Appeal from the St. Joseph Superior Court

The Honorable Julie P. Verheye, Magistrate

Trial Court Cause No.
71C01-2306-PO-762

Memorandum Decision by Judge Tavitas
Judges Mathias and Weissmann concur.

Tavitas, Judge.

Case Summary

[1] J.P. ("Girlfriend") appeals the trial court's order granting a protection order in favor of F.L. ("Boyfriend"). Girlfriend argues that the trial court clearly erred by granting this order, but we find Girlfriend's argument to be without merit. Accordingly, we affirm.

Issue

[2] Girlfriend raises one issue, which we restate as whether the trial court clearly erred by granting a protection order in favor of Boyfriend.

Facts

[3] Girlfriend is a lawyer based in Chicago, Illinois, and Boyfriend is a physician based in Granger, Indiana. Girlfriend and Boyfriend began dating in approximately September 2021. Boyfriend has children from previous relationships, and his young daughter ("Daughter"), who was age six or seven at the time, often stayed with Boyfriend while he was dating Girlfriend. In November or December 2021, Girlfriend moved in with Boyfriend. Girlfriend and Boyfriend communicated together mostly in their native Chinese.

[4] In approximately December 2021, Girlfriend had an "angry outburst[]" and expressed that she did not want to "share" Boyfriend with Daughter. Tr. Vol. II p. 5. Girlfriend offered to help Boyfriend pay a "large sum of money" to Daughter's mother to "pay out [his] relation" to his Daughter, but Boyfriend

refused. *Id*. at 5, 176. Girlfriend then destroyed some of Daughter's clothing and toys.

[5] On another occasion around that time, Daughter told Boyfriend that she was hungry, but Girlfriend grabbed Boyfriend's hair and clothes and "s[a]t against the door" to prevent Boyfriend from leaving the bedroom and cooking for Daughter. *Id*. at 12. Boyfriend left the bedroom when Girlfriend went to use the restroom, but Girlfriend "ran after" him and grabbed his hair and clothes, causing them both to fall. *Id*.

[6] In approximately February 2022, Boyfriend told Girlfriend that he wanted to break up with her; however, Girlfriend would not leave Boyfriend's house. Girlfriend threatened to accuse Boyfriend of "raping and abuse" and stated multiple times that, "if [she] cannot have [him], [she] will destroy [him]." *Id*. at 15. On February 20, 2022, Boyfriend sent text messages to Girlfriend stating that he wished to end the relationship, that her love was "really scary," that he was "terrified to be together" with her, and that he would "not be able to take [her] phone calls or messages." Ex. Vol. II p. 9. Girlfriend responded with an Internet link to information regarding Boyfriend's ex-wife. Boyfriend had to hire an attorney to get Girlfriend to leave his house. Boyfriend believed that Girlfriend had taken with her a book that contained his college classmates' and coworkers' contact information.

[7] After she moved out, Girlfriend began sending Boyfriend "very long emails." Tr. Vol. II p. 22. Boyfriend translated one of the emails: "[W]hy [is the] only

thing left for us [] not to trust[. W]hy [are we] hurting and damaging [and] using conspiracy and revenge to each other [sic]." *Id*. at 21. In another email, Girlfriend stated that Boyfriend had been "downgrade[d] from a university to a [county] clinic in the middle of nowhere, Indiana." *Id*. at 30. Sometime later, Boyfriend received "a message from an unknown sender" also stating that he had been "downgraded from a big university to a count[]y clinic in the middle of nowhere." *Id*. at 31.

[8] In the summer of 2022, Boyfriend created an online dating profile, and he matched with a woman who turned out to be Girlfriend, although Boyfriend claimed he did not know the profile belonged to her at the time. Girlfriend's profile included pictures of her but used a different name. When Boyfriend and Girlfriend spoke over the phone, Girlfriend stated that her education was in biology, not law. Boyfriend claimed that he did not recognize Girlfriend's voice.[1] Girlfriend, however, recognized Boyfriend's profile and believed that he wanted a second chance. Boyfriend arranged for a dinner date, but when he arrived at the restaurant and saw that the woman was Girlfriend, he drove away.

[9] Later that summer, Girlfriend contacted Boyfriend regarding belongings she left at his house, and Boyfriend agreed to drop them off at her residence in Chicago. Boyfriend then made several trips to Chicago. The first time, he left

[1] The trial court noted in its findings that it did not find credible Boyfriend's testimony that he did not recognize Girlfriend's voice over the phone.

Girlfriend's belongings in the lobby for her. Boyfriend made another trip on Thanksgiving day and found Girlfriend waiting for him in the lobby. Girlfriend said that she had been waiting there "for hours," and invited Boyfriend to stay for dinner, but Boyfriend declined. *Id*. at 36. Soon after, Girlfriend sent a text message to Boyfriend stating, "I want to stay with you forever and take care of you." *Id*. at 38.

[10] In October of that year, Girlfriend sent Boyfriend expensive clothes by mail. In January 2023, Boyfriend received a text message from an unknown sender stating, "[Y]ou're divorced. You lose a woman, you lose your money, and we are very sorry for you." *Id*. at 41. In February 2023, Girlfriend sent Boyfriend a postcard from Beijing wishing him a happy lunar new year.

[11] On May 5, 2023, letters were sent to Boyfriend's coworkers purportedly from his sons, who were ages fifteen and thirteen at the time. The letters contained the heading "RE: Dr. [Boyfriend]" and alleged that Boyfriend physically abused his sons. Ex. Vol. II p. 31. One line stated, "He [Boyfriend] used to beat our mum, mum usually called the police, and eventually divorced him. . . . Now it is our turn." *Id*. The following month, similar letters, purportedly from Daughter, were sent to Boyfriend's coworkers and neighbors also alleging child abuse. Eight people reported the allegations to the Department of Child Services ("DCS"), and DCS ultimately unsubstantiated the reports after investigating the allegations. Boyfriend believed that Girlfriend sent the letters because she knew the contact information for his coworkers and because the

word "mum" is not commonly used in American English. Girlfriend was taught British and American English when she attended school in China.

[12] On June 27, 2023, Boyfriend petitioned for a protection order against Girlfriend and alleged, in part, that Boyfriend was the victim of "repeated acts of harassment." Appellant's App. Vol. II p. 8. Approximately one week later, Boyfriend received in the mail a framed picture of himself, which contained cut-out images of two hats stacked on top of his head: a green hat bearing the name of Daughter and a darker hat bearing the name of his ex-wife. Text beside the picture reads, "[D]ad was greened by many women and I am the greenest hat of all the green he owns." Ex. Vol. II p. 33. According to Boyfriend, Girlfriend used to tease him, "[Y]ou [were] cheated by your wife, you have [a] green hat on your head." Tr. Vol. II p. 49.

[13] On July 17, 2023, Girlfriend emailed Boyfriend's attorney stating that she would "try to criminally charge" Boyfriend if he did not dismiss the protection order petition. *Id*. at 142. On July 24, 2023, Girlfriend filed a response to Boyfriend's protection order petition and, separately, a police report accusing Boyfriend of several crimes against her.

[14] The trial court held hearings on Boyfriend's protection order petition on July 25 and September 8, 2023, where Girlfriend appeared pro se. Girlfriend denied sending the letters to Boyfriend's coworkers and neighbors, and she denied stating that she would "destroy" Boyfriend's life if she could not have him. *Id*. at 164. She testified that she filed the police report because, "if [she] indeed

want[ed] to ruin him, [she had a] much better and efficient way to do that." *Id.* at 167-68.

[15] The trial court took the matter under advisement. On September 22, 2023, the trial court issued its order granting the protection order. The trial court found that Girlfriend authored the letters to Boyfriend's coworkers and neighbors because: (1) the use of "mum" was "consistent with [Girlfriend's] British English language training"; (2) the "content, structure and verbiage used in the letters" made it "unlikely that any of [Boyfriend's] children were the author of the letters"; (3) the use of "RE:" was a "manner of identifying the subject matter . . . used by lawyers"; and (4) Girlfriend was a lawyer and would have known that the letters would require "mandatory report[s]" of child abuse. Appellant's App. Vol. II p. 4.

[16] The trial court further found that Girlfriend sent the green-hat picture[2] and that Girlfriend's destruction of Daughter's belongings, the letters alleging child abuse, and the green-hat picture "support the conclusion that [Girlfriend] saw [Daughter] and to a lesser extent [Boyfriend's] sons as obstacles to the relationship she wanted with [Boyfriend]." *Id.* at 5. The trial court concluded that Boyfriend "has been the victim of repeated impermissible contact that would cause a reasonable person to suffer emotional distress and has caused [Boyfriend] to suffer emotional distress" and, ultimately, that Boyfriend had

[2] The trial court found that Girlfriend sent the green-hat picture to indicate "that the women in [Boyfriend's] life have taken his money." Appellant's App. Vol. II p. 5.

"met his burden of proof of harassment." *Id*. The protection order prohibits Girlfriend from "threatening to commit or committing acts of domestic violence or family violence, stalking or harassment against [Boyfriend]" and from "harassing, annoying, telephoning, contacting, or directly or indirectly communicating with [Boyfriend]." *Id*. Girlfriend now appeals.

Discussion and Decision

[17] Girlfriend argues that the trial court clearly erred by granting the protection order. We are not persuaded.

I. Standard of Review and Relevant Law

[18] When reviewing the trial court's grant of a protection order:

> we apply a two-tiered standard of review—we consider whether the evidence supports the court's findings and, if so, whether those findings support the judgment. *S.H. [v. D.W.]*, 139 N.E.3d [214,] 220–21 [(Ind. 2020)]; Ind. Trial Rule 52(A); *see also Costello v. Zollman*, 51 N.E.3d 361, 366 (Ind. Ct. App. 2016), *trans. denied*. In making these determinations, we neither reweigh the evidence nor determine the credibility of witnesses, and we consider only the evidence favorable to the trial court's decision. *T.M. v. T.M.*, 188 N.E.3d 42, 44 (Ind. Ct. App. 2022), *trans. denied*.

S.D. v. G.D., 211 N.E.3d 494, 497 (Ind. 2023). Additionally, our Supreme Court has emphasized that:

> In close cases . . . "the trial court is the one to make th[e] call." *S.D.* [*v. G.D.*], 195 N.E.3d [406,] 411 [(Ind. Ct. App. 2022)] (Altice, J., dissenting). Indeed, our trial courts are far

> better than appellate courts "at weighing evidence and assessing witness credibility." *Snow v. State*, 77 N.E.3d 173, 177 (Ind. 2017). And this is particularly true in protective order cases, where our trial judges see and hear the parties interact as they relay details about intensely personal, traumatic events. Our review of this evidence on appeal is far less clear from our vantage point in the "far corner of the upper deck." *Id*. (quoting *State v. Keck*, 4 N.E.3d 1180, 1185 (Ind. 2014)).

Id. at 498. Ultimately, the appellant must demonstrate that the trial court clearly erred by granting the protection order. *P.D. v. D.V.*, 172 N.E.3d 306, 310 (Ind. Ct. App. 2021) (citing *Fox v. Bonam*, 45 N.E.3d 794, 798 (Ind. Ct. App. 2015)).

[19] The purpose of the Indiana Civil Protection Order Act ("ICPOA") is 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 violence, family violence, and harassment." Ind. Code § 34-26-5-1. The ICPOA provides, in relevant part:

> (a) A person who is or has been a victim of domestic or family violence may file a petition for an order for protection against a:
>
> > (1) family or household member who commits an act of domestic or family violence; or
> >
> > (2) person who has committed stalking under IC 35-45-10-5 or a sex offense under IC 35-42-4 against the petitioner.

> (b) 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.

Ind. Code § 34-26-5-2.

[20] The trial court here found that Boyfriend was subjected to harassment by Girlfriend.[3] Discussing the elements of harassment under the ICPOA, this Court has explained:

> "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. "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).

P.D., 172 N.E.3d at 311. "Harassment does not include statutorily or constitutionally protected activity[.]" Ind. Code § 35-45-10-2. Additionally, the harassment must rise to the level of a present "'credible threat to the safety of a petitioner or a member of a petitioner's household'" when viewed objectively.

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[3] The trial court also found that Girlfriend committed domestic or family violence by committing: (1) criminal mischief in destroying Daughter's belongings, and (2) battery and disorderly conduct in grabbing Boyfriend. Girlfriend challenges this finding on the grounds that Boyfriend "did not allege" that he was the victim of domestic or family violence in the protection order petition. Appellant's Br. p. 10. Because we affirm the protection order based on the harassment prong of the ICPOA, we do not address Girlfriend's arguments regarding domestic or family violence during the relationship.

S.H., 139 N.E.3d at 219-220 (quoting Ind. Code § 34-26-5-9(f)). A threat is "credible" when it is "plausible or believable." *Id*. The trial court may not deny relief "solely because of a lapse of time between an act of domestic or family violence or harassment and the filing of a petition." Ind. Code § 34-26-5-13(h). The petitioner's burden is proof by a preponderance of the evidence. *Id*.

II. The trial court did not clearly err by granting the protection order

[21] We conclude that the trial court did not err by granting the protection order here. The trial court found that Girlfriend sent letters to Boyfriend's coworkers and neighbors accusing Boyfriend of abusing his children, which resulted in investigations by DCS. The trial court further found that, combined with Girlfriend's other conduct, Boyfriend was the victim of harassment.

[22] We first reject Girlfriend's argument that the trial court erred by finding that she authored the letters. A preponderance of the evidence supports a finding that Girlfriend did author the letters: Girlfriend previously told Boyfriend that she would "destroy" him if she could not have him, Tr. Vol. II p. 15; Girlfriend expressed discontent regarding Boyfriend's relationship with his children; and the letters were written after Boyfriend rejected Girlfriend's attempts to renew their relationship. Additionally, the use of "mum" in the letters is consistent with Girlfriend's education in British English, and the use of "RE: Dr. [Boyfriend]" as a heading in the letters is arguably consistent with how a lawyer, such as Girlfriend, would caption correspondence. It is highly unlikely that Boyfriend's teenage sons or six or seven-year-old Daughter authored these letters. Though Girlfriend argues that the trial court should have considered the

possibility that Boyfriend's ex-wife authored the letters, we cannot reweigh the evidence. The trial court's finding that Girlfriend wrote the letters is not clearly erroneous.[4]

[23] We also reject Girlfriend's argument that the trial court erred by issuing the protection order because, according to her, "the evidence does not support a finding" that Boyfriend suffered emotional distress or feelings of being terrorized, intimidated, or threatened.[5] Appellant's Br. p. 13. Letters to one's coworkers and neighbors alleging false claims of child abuse would obviously cause emotional distress to a reasonable person, and the trial court here found that Boyfriend suffered emotional distress as a result of the letters Girlfriend sent. The trial court heard Boyfriend's testimony regarding the consequences of those letters, including Boyfriend's testimony regarding reports to and investigations by DCS. Boyfriend also offered evidence that Girlfriend's love was "scary" and that he was "terrified to be together" with her. Ex. Vol. II p. 9. We will not second-guess the trial court's judgment regarding its finding that

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[4] Girlfriend also argues that the trial court erred by admitting "any exhibits" attached to Boyfriend's protection order petition because Boyfriend "never sought to introduce said exhibits, never made a request that the trial court take judicial notice of the exhibits, and never sought to have the exhibits incorporated." Appellant's Br. p. 14. During the hearing, Boyfriend's counsel requested that the trial court permit him to "go past the evidence" that was "already submitted" as attachments in the protection order petition instead of moving to admit each attachment individually, which the trial court permitted. Tr. Vol. II p. 44. Girlfriend did not object to the trial court's consideration of these attachments, so her challenge is waived. *Means v. State*, 201 N.E.3d 1158, 1166 (Ind. 2023) ("Failure to object at trial to the admission of the evidence results in waiver of the error.").

[5] Girlfriend does not argue that her actions do not constitute a credible threat.

Boyfriend suffered emotional distress, and we find that the evidence supports this finding.

[24] Lastly, we conclude that Girlfriend's conduct as a whole is sufficient to constitute harassment and that the corresponding finding was supported by the evidence. *See P.D.*, 172 N.E.3d at 311-12 (affirming grant of protection order when respondent posted on social media and contacted petitioner's ex-husband, son, and speakers at petitioner's events to discuss petitioner in "derogatory terms" and accuse petitioner of being a scam artist and faking her military service); *Fox*, 45 N.E.3d at 802 (holding that, although the trial court did not issue the protection order "based on any single allegation," the evidence as a whole supported the protection order). Accordingly, the trial court did not clearly err by granting the protection order here.

Conclusion

[25] The trial court did not clearly err by granting the protection order. Accordingly, we affirm.

[26] Affirmed.

Mathias, J., and Weissmann, J., concur.

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