MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Charles Marvin Hughes,
Appellant-Respondent,

v.

D.J.,
Appellee-Petitioner

May 31, 2023

Court of Appeals Case No. 23A-PO-247

Appeal from the Porter Superior Court

The Honorable Ana Patricia Osan, Magistrate

Trial Court Cause No. 64D01-2211-PO-9982

Memorandum Decision by Judge Crone
Judges Robb and Brown concur.

Crone, Judge.

Case Summary

[1] Charles Marvin Hughes appeals the trial court's issuance of a protective order against him and in favor of his former wife D.J., arguing that there is insufficient evidence to support the issuance of the order. Concluding that the evidence is sufficient, we affirm the trial court's grant of a protective order in favor of D.J.

Facts and Procedural History

[2] On November 30, 2022, D.J. filed for a protective order against her ex-husband Hughes, alleging that she was the victim of stalking and repeated acts of harassment by him and that he had threatened her with physical harm and placed her in fear of physical harm. The trial court held a hearing on January 12, 2023. Following the hearing, the trial court granted the protective order. Specifically, the trial court found that D.J. had met her burden of proof by a preponderance of the evidence that Hughes had engaged in repeated acts of harassment against D.J. and that he represents a credible threat to D.J.'s safety. This appeal ensued.

Discussion and Decision

[3] Protective orders are similar to injunctions, and therefore in granting an order the trial court must make special findings of fact and conclusions thereon. *See Hanauer v. Hanauer*, 981 N.E.2d 147, 148 (Ind. Ct. App. 2013) (citing Ind. Trial Rule 52(A) and Ind. Code §§ 34-26-5-9(a), -(f)). On appeal, 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. "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." *C.S. v. T.K.*, 118 N.E.3d 78, 81 (Ind. Ct. App. 2019) (quoting *Fox v. Bonam*, 45 N.E.3d 794, 798-799 (Ind. Ct. App. 2015)).

[4] The Indiana Civil Protection Order Act (CPOA) has the express purpose of promoting 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. Pursuant to Indiana Code Section 34-6-2-34.5, "[d]omestic or family violence" includes stalking as defined by Indiana Code Section 35-45-10-1: "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." Indiana Code Section 35-45-10-2 defines harassment 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." Impermissible contact includes, but is not limited to, "[f]ollowing or pursuing the victim," "[c]ommunicating with the victim[,]" and certain types of "[p]osting on social

media[.]" Ind. Code § 35-45-10-3. Under Indiana's anti-stalking law, the term "repeated" means that the impermissible contact occurs more than once. *Mysliwy v. Mysliwy*, 953 N.E.2d 1072, 1077 (Ind. Ct. App. 2011), *trans. denied*.

[5] "To obtain a protective order, the petitioner must show the respondent represents—present tense—a credible threat to the safety of a petitioner or a member of a petitioner's household." *S.H. v. D.W.*, 139 N.E.3d 214, 219-20 (Ind. 2020) (citation and quotation marks omitted). If the trial court finds that the petitioner has met this burden by a preponderance of the evidence, "the court shall grant relief necessary to bring about a cessation of the violence or the threat of violence." Ind. Code § 34-26-5-9(h). "In assessing the sufficiency of the evidence, we neither reweigh the evidence nor judge witness credibility." *Costello v. Zollman*, 51 N.E.3d 361, 367 (Ind. Ct. App. 2016), *trans. denied*. "We consider only the evidence of probative value and reasonable inferences that support the judgment." *Id*.

[6] Hughes contends that D.J. did not present sufficient evidence to support the granting of the protective order. Specifically, he argues that D.J. failed to prove by a preponderance of the evidence that he represents a present credible threat to her safety. We disagree.

[7] The evidence most favorable to the trial court's judgment indicates that on April 30, 2022, Hughes told Jacqueline Fowler, a mutual friend of the parties, that his soon-to-be ex-wife D.J. was a "bitch" and a "whore" and that "he was going to get her[.]" Tr. Vol. 2 at 15. Hughes displayed so much "anger" and

was "so volatile" and "out of control" while talking about D.J. that Fowler immediately called D.J. to report Hughes's threats because she was "concerned about D.J.'s safety" and believed that she "was in harm's way." *Id*. at 15-16. Then, on May 6, 2022, Hughes communicated more threats toward D.J. to Fowler. He called Fowler because he specifically "wanted [Fowler] to tell [D.J.] some things." *Id*. Hughes instructed Fowler to let D.J. know that he was aware that she was "gonna be out at Cedar Lake with an event" and that he "was going to get her" and was "gonna f**k her up." *Id*. at 16-17. The "intensity" with which Hughes expressed himself caused Fowler to be greatly concerned that "he was going to do something to [D.J.]." *Id*. at 17. Fowler advised D.J. of these threats.

[8] D.J. further presented evidence that Hughes drove by her new home twice on November 21, 2022. The first time, Hughes took photos of the home. A mutual friend, who was standing outside and witnessed the behavior, immediately reported it to D.J. Sometime shortly thereafter, D.J. saw Hughes again coming down her street. This "concerned [D.J.] very much" because she had purposely not given Hughes her new address following their divorce in order to protect her safety and well-being in light of his prior threats. *Id*. at 35. D.J. testified that Hughes's behavior makes her "scared" and "very concerned" for her safety because it "has gone on for so long" and "just continue[s] to get worse." *Id*. at 37.

[9] Based upon this evidence, the trial court determined that D.J. met her burden of showing by a preponderance of the evidence that Hughes committed repeated

acts of harassment against her, and Hughes does not challenge the sufficiency of the evidence supporting the trial court's conclusion in this regard.[1] Rather, Hughes posits that, when viewed objectively, the evidence in the record fails to support the trial court's finding that he represents a present credible threat to D.J. as required for the issuance of a protective order. *See S.H.*, 139 N.E.3d at 220 ("In addition to focusing on the parties' present situation, the [CPOA] requires that the threat posed by the respondent be viewed objectively. Not only must there be a present threat, but the threat must be credible—meaning plausible or believable."). He argues that, among other things, his verbal threats were not objectively believable or frightening because they were made while the parties were going through an acrimonious divorce. He further attaches great significance to the fact that, after he made those threats, the parties' divorce was finalized, and they attended the same political function "without any incident." Appellant's Br. at 16.

[10] First, we decline Hughes's invitation to downplay or normalize his acts of threatening violence against D.J. simply because the threats occurred during the pendency of dissolution proceedings. Moreover, the fact that the parties may have attended a public event and managed to coexist since their divorce without

[1] Hughes points out that his alleged threats of violence were not communicated by him directly to D.J. but were communicated to Fowler and then repeated to D.J. However, he does not specifically argue that such third-party communications would be insufficient to support a finding of harassment. Accordingly, we decline to address the matter further.

Hughes making good on his threats is hardly dispositive of whether he poses a present objectively credible threat to D.J.'s safety.

[11] The record indicates that D.J. filed her petition for a protective order on November 30, 2022, a week after Hughes drove by her house twice. She testified that this behavior, in light of the prior repeated threats of harm, caused her to feel terrorized and threatened. Although Hughes characterizes his drive-by behavior as innocent and objectively nonthreatening, there is no requirement that the contact at issue be threatening on its face. *Maurer v. Cobb-Maurer*, 994 N.E.2d 753, 757-58 (Ind. Ct. App. 2013).[2] The trial court specifically found D.J. to be more credible than Hughes on this issue, *see* Tr. Vol. 2 at 70, and it is not our prerogative on appeal to reassess witness credibility. The trial court had sufficient objective evidence before it to determine that Hughes represents a present credible threat to D.J. to support the issuance of a protective order. Accordingly, the judgment of the trial court is affirmed.

[12] Affirmed.

Robb, J., and Brown, J., concur.

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[2] Hughes briefly argues that his act of simply "being on a city street" is constitutionally protected conduct that is exempt from the definition of harassment. *See Kent v. Dulles*, 357 U.S. 116, 125, (1958) ("The right to travel is a part of the liberty of which the citizen cannot be deprived without due process of law under the Fifth Amendment."); *see also* Ind. Code § 35-45-10-2 ("Harassment does not include statutorily or constitutionally protected activity[.]"). Driving by and photographing the private home of his ex-wife whom he had repeatedly verbally threatened to harm is not akin to simply being on a city street.