MEMORANDUM DECISION

ATTORNEY FOR APPELLANT

Michael L. Carmin
CarminParker, PC
Bloomington, Indiana

IN THE COURT OF APPEALS OF INDIANA

R.W.,

Appellant-Respondent,

v.

T.Y.,

Appellee-Petitioner.

October 5, 2023

Court of Appeals Case No. 23A-PO-1201

Appeal from the Monroe Circuit Court

The Honorable Emily Salzmann, Judge

Trial Court Cause No. 53C08-2303-PO-610

Memorandum Decision by Judge Bradford
Judges Vaidik and Brown concur.

Bradford, Judge.

Case Summary

[1] In March of 2023, T.Y. petitioned for an order for protection against R.W. for, *inter alia*, monitoring his movements with surveillance cameras trained on his property. Following a hearing, the trial court granted T.Y.'s petition. R.W. argues that there is insufficient evidence to sustain the trial court's order. Because we disagree, we affirm.

Facts and Procedural History

[2] R.W. and T.Y. are next-door neighbors in Bloomington. On March 23, 2023, T.Y. petitioned for a permanent order for protection against R.W., alleging that R.W.

> has placed over 50 calls to 911 requesting officers and making allegations about myself and/or my family/friends who are at my home. She has called my family member's employers trying to cause trouble, she has made numerous false claims to DCS involving my children, and continues to monitor my home and all movements with her cameras. Some of which cameras are pointed directly into my windows and have caused my family extreme anxiety.

Appellant's App. Vol. II p. 17.

[3] On April 25, 2023, the trial court held a hearing on T.Y.'s petition. During the hearing, T.Y. attempted to present evidence of telephone calls placed to 911 by R.W., R.W. calling family members' employers, and R.W. making numerous false claims to DCS involving T.Y.'s children. The trial court, however, sustained R.W.'s objections to this evidence.

[4] T.Y. did present three videos as evidence. The first video presented was unidentified persons yelling at each other, one of whom T.Y. identified as his friend. The second video was of a loud horn sound, which T.Y. testified was an air horn being set off by R.W., and the third video was also a blaring horn sound. Audio of someone speaking, which T.Y. identified as himself, was inaudible, to which R.W. objected. The trial court sustained the objection, stating that it would consider the horn sounds but not any audio recording of statements by T.Y. unless he testified to those statements. The trial court excluded evidence of explosions coming from R.W.'s property on the basis that T.Y.'s petition contained no allegations of that sort.

[5] T.Y. testified that R.W. had placed two cameras in trees "overlooking his house." Tr. Vol. II p. 10. R.W. acknowledged that she had placed a camera in a tree on her property but testified that the camera was intended to monitor her property line and trespasses by T.Y. onto her property. Two images from the camera clearly show T.Y.'s residence and a portion of his yard. While R.W. acknowledged that T.Y.'s residence was visible in the images taken by the camera, she asserted that the camera lacked the capability to capture anything occurring inside.

[6] On May 1, 2023, the trial court granted T.Y.'s petition for a permanent order for protection in an order that provides, in part, as follows:

> 2. [R.W.] is prohibited from harassing, annoying, telephoning, contacting, or directly or indirectly communicating with [T.Y.]
>
> […]

4. [R.W.] is ordered to stay away from the residence of [T.Y.]

5. [T.Y.] and [R.W.] are permitted to occupy the same location as follows:

   [T.Y.] and [R.W.] live next door to each other. [R.W.] is allowed to access their own home and access to the roadway, but is not allowed to have ANY contact with [T.Y.] or [T.Y.]'s property. This also applies to the family or household members of [T.Y.]

[…]

11. [R.W.] is prohibited from using or possessing a firearm, ammunition, or deadly weapon. [R.W.] is ordered to surrender the following firearm(s), ammunition, and/or deadly weapon(s) which the Court finds are in the control, ownership, or possession of [R.W.] or in the control or possession of another person on behalf of [R.W.]:

    Any firearms or explosives that are in the possession of [R.W.]

    [R.W.] has one month to remove any firearms and explosives from their possession. If any firearms or explosives are in their possession after June 1, 2023 then they will be in violation of this Order.

Appellant's App. Vol. II pp. 11–12.

Discussion and Decision

[7] R.W. contends that the trial court abused its discretion in issuing a permanent order for protection against her in favor of T.Y. As an initial matter, we note that T.Y. did not file an appellate brief, and we will not undertake the burden of developing arguments for him. *See State Farm Ins. v. Freeman*, 847 N.E.2d 1047, 1048 (Ind. Ct. App. 2006). Under such circumstances, however, we do apply

"a less stringent standard of review with respect to showings of reversible error" and "may reverse the lower court if the appellant can establish *prima facie* error." *Id.* "*Prima facie* is defined in this context as 'at first sight, on first appearance, or on the face of it.'" *Id*. (citation omitted). "The purpose of this rule is not to benefit the appellant. Rather, it is intended to relieve this court of the burden of controverting the arguments advanced for reversal where that burden rests with the appellee." *Id*. "Where an appellant is unable to meet that burden, we will affirm." *Id*.

[8] With this in mind, we review a permanent order for protection as follows:

> 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. In deference to the trial court's proximity to the issues, we disturb the order only where there is no evidence supporting the findings or the findings fail to support the order. We do not reweigh evidence or reassess witness credibility, and we consider only the evidence favorable to the trial court's order. The party appealing the order must establish that the findings are clearly erroneous. 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.*

Fox v. Bonam, 45 N.E.3d 794, 798 (Ind. Ct. App. 2015) (citations and quotations marks omitted).

[9] Indiana Code section 34-26-5-2(b) provides that "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 acts of harassment against the petitioner." For

purposes of subsection 34-26-5-2(b), "harassment" is undefined.[1] "When the legislature has not defined a word, we give the word its common and ordinary meaning [and i]n order to determine the plain and ordinary meaning of words, we may properly consult English language dictionaries." *Youngblood v. Jefferson Cnty. Div. of Fam. & Child.*, 838 N.E.2d 1164, 1171 (Ind. Ct. App. 2005), *trans. denied*. "Harass" may be defined as "to vex, trouble, or annoy continually or chronically (as with anxieties, burdens, or misfortune)[.]" WEBSTER'S THIRD NEW INT'L DICTIONARY 1031 (Phillip Babcock Gove et al. eds., G.&C. Merriam Company 1964).

[10] We conclude that sufficient evidence supports the issuance of an order for protection in this case. T.Y. testified that R.W. had installed two surveillance cameras trained on his property, and exhibits admitted at the hearing indicated that at least one was capable of taking images that included T.Y.'s residence and, seemingly, a large portion of his yard. Moreover, the trial court was under no obligation to credit R.W.'s testimony that her intent was merely to monitor her property line or that her cameras were incapable of observing activity inside T.Y.'s residence. In any event, even if we assume, *arguendo*, that R.W. never did anything but monitor her property line and that the cameras could not

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[1] R.W. draws our attention to statutory definitions of "stalking" and "harassment"; Indiana Code subsection b(2), however, does not refer to or incorporate these definitions, and, lacking such an incorporation, both provisions, by their plain language, apply only to the chapter in which they appear, which is in the criminal code. *See* Ind. Code § 35-45-10-1 ("*As used in this chapter*, 'stalk' means[…]") (emphasis added) *and* Ind. Code § 35-45-10-2 ("*As used in this chapter*, 'harassment' means[…]") (emphasis added). Indiana Code section 34-26-5-2(a) does permit a person to obtain an order for protection against a "person who has committed stalking under Ind. Code § 35-45-10-5" but only if the person seeking the order "is or has been a victim of domestic or family violence[,]" which is not the case here. Ind. Code § 34-26-5-2(a)(1).

observe activity inside T.Y.'s home, we are at something of a loss to understand how T.Y. was supposed to know that. Even though T.Y. did not specifically testify that he and the other members of his household had suffered anxiety, we think it self-evident that installing surveillance cameras such that one seemingly has the ability to constantly monitor another's activities qualifies as harassment.

[11] We affirm the judgment of the trial court.[2]

Vaidik, J., and Brown, J., concur.

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[2] R.W. also argues that the trial court has issued an impermissible mutual order for protection because the trial court issued an order for protection against T.Y. in her favor in another proceeding. While it is true that "[a] court may not grant a mutual order for protection to opposing parties[,]" Ind. Code § 34-26-5-14(a), the provision applies only in in single proceeding where one party has petitioned for an order for protection but the respondent has not. That is not what occurred in this case, as no order for protection has been issued in R.W.'s favor in this case.

In any event, Indiana Code section 34-26-5-14(b) clearly contemplates the issuance of reciprocal orders for protection in *separate* proceedings and provides that

> [i]f both parties allege injury, the parties shall do so by separate petitions. The trial court shall review each petition separately in an individual or a consolidated hearing and grant or deny each petition on the petition's individual merits. If the trial court finds cause to grant both petitions, the court shall do so by separate orders with specific findings justifying the issuance of each order.

Even though T.Y. did not file a brief bringing this to our attention (or the fact that R.W. did not raise this issue below), we cannot ignore the plain language of the statute to which, after all, R.W. cited to support her argument on this point.