# MEMORANDUM DECISION





IN THE

# Court of Appeals of Indiana

P.S.,

*Appellant-Respondent*

v.

R.S.,

*Appellee-Petitioner*

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March 13, 2024

Court of Appeals Case No.
23A-PO-2159

Appeal from the Vigo Superior Court

The Honorable Matthew A. Sheehan, Judge

Trial Court Cause No.
84D05-2305-PO-2669

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**Memorandum Decision by Judge Bailey**
Judges Crone and Pyle concur.

**Bailey, Judge.**

# Case Summary

[1] R.S. filed a petition for a protection order against P.S., alleging that he was a victim of stalking and repeated acts of harassment by P.S. on social media. Following a hearing, the trial court denied R.S.'s petition but sua sponte imposed on the parties what the court termed a "mutual restraining order." (Tr. Vol. II, pg. 14.) The court directed the parties not to communicate, harass, or threaten each other individually, directly, through third parties, or through social media. P.S. filed a motion to correct error in which she argued that the trial court erred by sua sponte imposing on the parties a mutual restraining order after the court had denied R.S.'s petition for a protection order. P.S.'s motion to correct error was deemed denied. P.S. raises two issues on appeal, of which we find the following restated issue dispositive: whether the trial court abused its discretion by denying P.S.'s motion to correct error. Concluding that the trial court abused its discretion by denying P.S.'s motion, we reverse and remand with instructions to grant P.S.'s motion to correct error.[1]

# Facts and Procedural History

[1] Given our holding, it is unnecessary to address P.S.'s constitutional claim that the trial court's mutual restraining order violated her First Amendment right to free speech under the United States Constitution.

[2] At the beginning of his sophomore year in high school, R.S. created a video of himself "spelling . . . out a racist slur." (*Id.* at 7.) The video surfaced on social media during R.S.'s senior year in high school, and the video continues to circulate on social media.

[3] P.S., a concerned citizen, saw the video and began commenting about it and R.S. on her publicly accessible social media page. P.S. "ke[pt] posting and reposting negative things against [R.S.,] . . . and . . . calling him out by his name as well." (*Id.* at 8.) And P.S. and other citizens appeared at the local school board meeting to "try[] to get some type of disciplinary" action imposed. (*Id.* at10.) R.S.'s father ("Father") contacted P.S. and asked her to remove the video from her social media feed so that Father could "take care of [disciplining his son] in-house." (*Id.* at 7.) P.S. complied with Father's request but "then [the video] came back numerous times [and] other people started sharing it." (*Id.* at 8.)

[4] On May 3, 2023, R.S. filed a petition for a protection order against P.S., alleging that P.S. had used social media to stalk R.S., slander him, and disseminate false information. On June 5, the trial court held a hearing on the matter, at which R.S. (an adult at the time of the hearing), Father, and P.S. testified.[2]

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[2] At the hearing, the trial court indicated that there were "a number of . . . Facebook posts" that were submitted with R.S.'s petition for a protection order. (Tr. Vol. II, pg. 7.) However, the social media posts were not introduced into evidence and are not part of the record on appeal.

[5] R.S. testified that in making the video, he made a "dumb, stupid mistake" three years ago that had been circulating on social media for the "past seven [] months[,] and [P.S.] has been slandering my name." (*Id.* at 7.) Father told the trial court that the "only thing [Father and R.S.'s mother] have asked for from day one [is to] let us take care of our son, . . . but again, . . . [P.S] seems to keep . . . posting and reposting negative things against him." (*Id.* at 8.)

[6] P.S. testified that she never contacted R.S. or his family, and that she "[d]idn't know where they lived, didn't know anything." (*Id.* at 11.) P.S. further testified that she did not "have any interest in targeting [R.S. on social media]," but that she believed it important to continue to comment on the matter. (*Id.* at 12.) She told the court that in her future social media posts, she would "probably" "comment on" R.S. and any other individuals who had been involved with the video incident. (*Id.*)

[7] After hearing the testimony, the trial court denied R.S.'s petition for a protection order, ruling that "there's not grounds" to grant it. (*Id.* at 14.) The court then sua sponte imposed what it termed a "mutual restraining order" on both parties, prohibiting them from—among other activities—communicating, harassing, or threatening each other directly or indirectly, including on social media. (*Id.*) Specifically, the trial court instructed the parties as follows:

> THE COURT: Alright, so here's what I am going to do. I am going to order both of you to not to [sic] communicate, not to harass, not to threaten each other in anyway [sic] shape or form, individually, directly, or through third . . . parties or any form of social media. And I'm not granting the Protective Order, that's

> denied cuz [sic] there's not grounds for a Protective Order. But I am granting a mutual restraining order so the two . . . of you leave each other alone. And if there's things that need to be addressed ah, as far as involvement and the school corporation or contacting law enforcement or amongst your friends that's perfectly fine. But, obviously there's been months of back and forth on social media where negative things were said on both sides and it's both of you just need to be adults and there's no reason for it. So do you understand ma'am?
>
> [P.S.]: I do.
>
> THE COURT: Alright do you understand?
>
> [FATHER]: Yes, sir.
>
> THE COURT: You too sir?
>
> [R.S.]: Sir.

(*Id.*) Neither party had requested a restraining order.

[8] The trial court memorialized its ruling in a written order issued on June 5, 2023, which provided, in relevant part:

> The parties agree under oath, and the Court orders the parties not to communicate, not to harass, not to threaten each other [in any way] shape or form individually, directly, or through third parties or any forms of social media.
>
> IT IS THEREFORE ORDERED BY THE COURT that the Petition for an Order for Protection is hereby denied.

(Appellant's App. Vol. II, pg. 5.)

[9] On July 5, 2023, P.S. filed a motion to correct error, requesting that the trial court "correct" its June 5 order. (*Id.* at16.) The trial court did not rule on the motion; thus, it was deemed denied.[3] P.S. now appeals.

# Discussion and Decision

## Sua Sponte Imposition of Mutual Restraining Order

[10] We initially observe that R.S. failed to file an appellee's brief. Under such a circumstance, we do not undertake to develop an argument on his behalf, and we may reverse upon P.S.'s prima facie showing of reversible error. *See Carter v. Grace Whitney Props.*, 939 N.E.2d 630, 633 (Ind. Ct. App. 2010). In this context, prima facie error means "at first sight, on first appearance, or on the face [of] it." *Id.* at 633-34 (internal quotation marks omitted). This standard prevents two evils that otherwise would undermine the judicial process. *Pala v. Loubser*, 943 N.E.2d 400, 407 (Ind. Ct. App. 2011), *trans. denied*. By requiring the appellant to show some error, we ensure that the court, not the parties, decides the law. *Id.* By allowing the appellant to prevail upon a showing simply of prima facie error, we avoid the improper burden of having to act as advocate for the absent appellee. *Id.*

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[3] Indiana Trial Rule 53.3(A) provides:

> In the event a court fails for forty-five (45) days to set a Motion to Correct Error for hearing, or fails to rule on a Motion to Correct Error within thirty (30) days after it was heard or forty-five days (45) days after it was filed, if no hearing is required, the pending Motion to Correct Error shall be deemed denied. Any appeal shall be initiated by filing the notice of appeal under Appellate Rule 9(A) within thirty (30) days after the Motion to Correct Error is deemed denied.

[11] Here, P.S. appeals from the denial of her motion to correct error. We generally review the denial of a motion to correct error for an abuse of discretion. *Kornelik v. Mirtal Steel USA, Inc.*, 952 N.E.2d 320, 324 (Ind. Ct. App. 2011), *trans. denied*. An abuse of discretion occurs when the trial court's decision is against the logic and effect of the facts and circumstances before the court, or if the court has misinterpreted the law. *Hawkins v. Cannon*, 826 N.E.2d 658, 661 (Ind. Ct. App. 2005), *trans. denied*.

[12] On appeal, P.S. argues that the trial court, having denied R.S.'s sole request for relief—that is, the protection order—abused its discretion when it sua sponte imposed a mutual restraining order on the parties. We agree, as neither party requested that the trial court enter a restraining order against the other party.

[13] Regarding restraining orders, our Supreme Court enacted Indiana Trial Rule 65(B) for the purpose of providing an orderly and constitutional procedure for obtaining a temporary restraining order ("TRO"). *In re Anonymous*, 786 N.E.2d 1185, 1189 (Ind. 2003). Rule 65(B) provides, in part:

> A temporary restraining order may be granted without written or oral notice to the adverse party or his attorney only if:
>
> (1) it clearly appears from specific facts shown by affidavit or by the verified complaint that immediate and irreparable injury, loss, or damage will result to the applicant before the adverse party or his attorney can be heard in opposition; and

> (2) the applicant's attorney certifies to the court in writing the efforts, if any, which have been made to give notice and the reasons supporting his claim that notice should not be required.

[14] Additionally, specific requirements apply for every restraining order granted without notice—such as, defining the injury, stating why it is irreparable, and stating why the order was granted without notice. (*See* T.R. 65(B).) And, as its name reflects, the TRO is temporary and

> shall expire by its terms within such time after entry, not to exceed ten [10] days, as the court fixes, unless within the time so fixed the order, for good cause shown, is extended for a like period or unless the whereabouts of the party against whom the order is granted is unknown and cannot be determined by reasonable diligence or unless the party against whom the order is directed consents that it may be extended for a longer period.

(*Id.*) Furthermore, if a TRO is granted without notice,

> the motion for a preliminary injunction shall be set down for hearing at the earliest possible time and takes precedence of all matters except older matters of the same character; and when the motion comes on for hearing the party who obtained the [TRO] shall proceed with the application for a preliminary injunction and, if he does not do so, the court shall dissolve the [TRO].

(*Id.*)

[15] As for a trial court's authority to grant a restraining order, Indiana Code Section 34-26-1-3(a) provides in part that "[r]estraining orders and injunctions may be *granted* by the . . . superior courts . . . or the judges of the . . . superior

courts[.]" (Emphasis added.) When we interpret a statute, we must give every word meaning, and assume that the legislature used it intentionally. *Merritt v. State*, 829 N.E.2d 472, 475 (Ind. 2005). And, as this Court reasoned in *Squibb v. State ex rel. Davis*, "[t]he use of the word 'granted' [in the statute] implies that there must be something to grant, i.e., a request or motion. Had the legislature intended to allow [restraining orders] to be issued sua sponte, it could have used 'issued,' or 'ordered.'" 860 N.E.2d 904, 909 (Ind. Ct. App. 2007).

[16] In this case, because neither R.S. nor P.S. requested that the trial court enter a TRO, we conclude that the court abused its discretion by sua sponte imposing on the parties the mutual restraining order. And, thus, the court abused its discretion by denying P.S.'s motion to correct error. Therefore, we reverse the trial court's judgment and remand with instructions to grant P.S.'s motion to correct error.

# Conclusion

[17] The trial court abused its discretion by denying P.S.'s motion to correct error. Accordingly, we reverse the trial court's judgment and remand with instructions to grant P.S.'s motion to correct error.

[18] Reversed and remanded with instructions.

Crone, J., and Pyle, J., concur.

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