ATTORNEY FOR APPELLANT:

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IN THE
COURT OF APPEALS OF INDIANA

CHUCK GUNTER,	)	
	)	
Appellant-Respondent,	)	
	)	
vs.	)	No. 69A01-0705-CV-215
	)	
LARISSA CURRY,	)	
	)	
Appellee-Petitioner,	)	
	)	
J.M.L.,	)	
	)	
Protected Child.	)	

APPEAL FROM THE RIPLEY CIRCUIT COURT
The Honorable Carl Taul, Judge
Cause No. 69C01-0702-PO-26

November 26, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

KIRSCH, Judge

Chuck Gunter appeals the trial court's order granting a protective order to Larissa Curry and her daughter J.M.L. He raises two issues, which we consolidate and restate as whether the trial court erred when it issued the order of protection.

We reverse.

FACTS AND PROCEDURAL HISTORY

On February 27, 2007, Curry filed a petition for an order for protection against Gunter. In this petition, Curry requested protection for herself, her fiancé, and her three daughters. The petition alleged that Gunter had committed stalking against Curry's fifteen-year-old daughter, J.M.L., by sending her emails.

Gunter is a volunteer fireman and EMT in Versailles, Indiana. He had met J.M.L. through his friendship with her brother-in-law and played on a church softball league with her. Gunter had also employed J.M.L. to babysit for his children. Beginning in October 2006, Gunter and J.M.L. exchanged emails and continued the exchange until January 2007, when Curry's fiancé asked Gunter to stop emailing J.M.L. Gunter made no further attempt to contact J.M.L. after this.

A hearing was held on Curry's petition on April 4, 2007, and the trial court issued an order for protection on April 9, which enjoined Gunter from contacting Curry and J.M.L. The order contained findings that: (1) Gunter represented a credible threat to the safety of Curry or a member of her household; (2) Gunter's actions constituted harassment; (3) Curry has shown by a preponderance of the evidence that domestic or family violence had occurred sufficient to justify the order; (4) Gunter had failed to show good cause why the order should not be issued; (5) Gunter had failed to agree to the issuance of the order; and (6) relief was

necessary to bring about a cessation of the violence or threat of violence. *Appellant's App.* at 4. Gunter now appeals.

DISCUSSION AND DECISION

Because the trial court entered findings of fact and conclusions thereon, we apply a two-tiered standard of review. *Orlich v. Orlich*, 859 N.E.2d 671, 673-74 (Ind. Ct. App. 2006). First, we determine if the evidence supports the findings and second, whether the findings support the judgment. *Id*. at 674. We consider only the evidence most favorable to the judgment, together with the reasonable inferences that can be drawn therefrom. *Id*. We do not reweigh the evidence or judge the credibility of the witnesses. *Id*. We will only set aside the trial court's findings and conclusions if they are clearly erroneous, that is, if the record contains no facts or inferences supporting them. *Staresnick v. Staresnick*, 830 N.E.2d 127, 131 (Ind. Ct. App. 2005). A judgment is clearly erroneous when a review of the record leaves us with a firm conviction that a mistake had been made. *Id*.

We note that Curry has failed to file an appellee's brief. In such a situation, we will not undertake the burden of developing arguments for Curry. *Cox v. Cantrell*, 866 N.E.2d 798, 810 (Ind. Ct. App. 2007), *trans. denied*. We apply a less stringent standard of review, and we may reverse the trial court's decision if the appellant can establish *prima facie* error. *Id*. *Prima facie* means "at first sight, on first appearance, or on the face of it." *Id.*

Gunter argues that the trial court erred when it issued an order for protection because the evidence did not support its findings and the findings did not support the judgment. He specifically contends that evidence did not support a finding that domestic violence occurred or that Gunter committed harassment against either Curry or J.M.L. He also claims that the

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trial court's findings did not support the order for protection because Curry and J.M.L. did

not qualify for protection under IC 34-26-5-2.

The trial court made a finding that Gunter's actions constituted harassment as defined

by Indiana law. IC 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." No evidence was presented at the hearing that Gunter's conduct of

emailing J.M.L. would cause a reasonable person to suffer emotional distress or that it

actually caused J.M.L. to suffer such. The evidence showed that the email exchange was

initiated by J.M.L. in October 2006 and continued for several months until Gunter was asked

to stop by Curry's fiancé. Curry testified that J.M.L. was "bothered" by one email from

Gunter on November 16 where he stated that he watched her cheer at a basketball game until

she sat down. *Tr.* at 11; *Appellant's App.* at 13. J.M.L. did not testify at the hearing, and it

was not shown how being bothered by one email rose to the level of emotional distress. The

evidence did not support the finding that Gunter's actions constituted harassment.

The trial court also made a finding that Curry had shown by a preponderance of the

evidence that domestic or family violence had occurred, which was sufficient to justify the

order for protection.[1] Domestic or family violence requires that the acts of violence be

committed by a family or household member. IC 34-6-2-34.5. Here, Gunter was not a

family or household member of either Curry or J.M.L. Additionally, under IC 34-6-2-34.5,

domestic or family violence also includes stalking or a sex offense whether or not the offense is committed by a family or household member. Here, there was no allegation of a sex offense. Stalking is defined as "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." IC 35-45-10-1. As stated above the evidence did not support the finding that Gunter's actions constituted harassment, and additionally, no evidence was presented to show that J.M.L. felt terrorized, frightened, intimidated, or threatened by Gunter's actions. The evidence did not show that Gunter committed stalking. Therefore, the evidence did not support a finding that domestic violence occurred.

Under IC 34-26-5-2, only certain persons are authorized to file a petition for an order of protection. The statute states in pertinent 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 parent, a guardian, or another representative may file a petition for an order for protection on behalf of a child against a:

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[1] We note that the trial court's findings are not actually findings, but seem to be conclusions based on the evidence presented at the hearing. Under Indiana Trial Rule 52(A), in a case where the issue is tried upon facts without a jury, the trial court shall find the facts specially and state its conclusions thereon.

> (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 child.

IC 34-26-5-2(a), (b).   Under the statute, in order for Curry to qualify for an order of protection, she must be a victim of domestic or family violence and must file the petition against either a family or household member who committed an act of domestic violence or a person who has committed stalking or a sex offense against her. As stated above, Gunter is not a family or household member of Curry, and no allegations were made that she was a victim of domestic or family violence, stalking, or a sex offense. Therefore, Curry was not a person authorized to file a petition for an order of protection under IC 34-26-5-2. The trial court erred in issuing the order as it pertained to Curry.

Under the statute, Curry could petition the trial court for an order of protection on behalf of J.M.L. if Gunter was a family or household member who committed an act of domestic violence or if he had committed stalking or a sex offense against J.M.L. Gunter was not a family or household member of Curry or J.M.L. and was not accused of committing a sex offense. Further, as previously stated, the evidence did not support a finding that Gunter committed stalking against J.M.L. Curry was not authorized to file a petition on behalf of J.M.L. for an order of protection. We conclude that Gunter has proven *prima facie* error, and the trial court erred in issuing an order of protection for both Curry and J.M.L.

Reversed.

ROBB, J., and BARNES, J., concur.