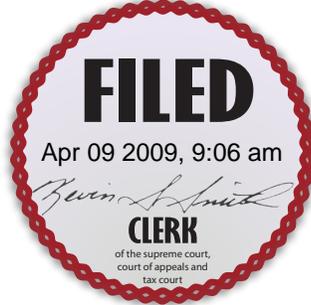


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.

APPELLANT PRO SE:

SHELLY M. PHIPPS
Bloomington, Indiana



**IN THE
COURT OF APPEALS OF INDIANA**

SHELLY M. PHIPPS,)
)
 Appellant-Respondent,)
)
 vs.) No. 53A01-0809-CV-413
)
 KEEVIN J. GRAY,)
)
 Appellee-Petitioner.)

APPEAL FROM THE MONROE CIRCUIT COURT
DIVISION IV
The Honorable Frances G. Hill, Judge
Cause No. 53C04-0806-PO-1410

April 9, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

RILEY, Judge

STATEMENT OF THE CASE

Appellant-Respondent, Shelly M. Phipps (Phipps), acting *pro se*, appeals the trial court's grant of a protective order against her and in favor of Appellee-Petitioner, Keevin J. Gray (Gray).

We affirm.

ISSUE

Phipps presents three issues for our review, which we consolidate and restate as: Whether the trial court erred in granting the protective order.

FACTS AND PROCEDURAL HISTORY

On June 26, 2008, Gray filed a petition seeking a protective order against Phipps, claiming that Phipps had been stalking him. Gray is a minister, and Phipps is a former member of his church. On July 31, 2008, the trial court held a hearing and entered a protective order against Phipps, which, in part, ordered Phipps to stay away from the church. The order was set to expire on January 31, 2009. On August 6, 2008, Phipps filed a Motion to Re-Open, Re-Hear and Re-Consider. Phipps' motion included two-and-a-half pages of additional "testimony" that was prefaced as follows:

At the July 31st hearing, upon instruction of my attorney it was stated that "The Judge doesn't want to hear everything that has happened the last two years." I, the Respondent sat with three pages of testimony and didn't present it because I didn't think it would be allowed. This testimony is vital to this case.

(Appellant's Br. p. *).¹ On August 20, 2008, the trial court, finding no grounds to re-open the case for additional testimony, denied Phipps' motion.

¹ Phipps' August 6, 2008, motion is attached to the end of her brief, but the pages are not numbered.

Phipps now appeals. Additional facts will be provided as necessary.

DISCUSSION AND DECISION

Phipps argues that the trial court erred by granting the protective order. Because the order expired on January 31, 2009, an argument could be made that this appeal is moot. However, Gray did not file a brief or otherwise argue mootness, so we decline to dismiss the appeal on that basis. Moreover, because Gray failed to file a brief, Phipps need only show *prima facie* error in order to prevail on appeal. See *Trinity Homes, LLC v. Fang*, 848 N.E.2d 1065, 1068 (Ind. 2006). “*Prima facie* error” in this context is defined as at first sight, on first appearance, or on the face of it. *Id.* Where an appellant is unable to meet this burden, we will affirm. *Id.*

In Indiana, a person who is or has been a victim of stalking may file a petition for an order for protection against the person who did the stalking. Ind. Code §§ 34-26-5-2, 34-26-2-34.5; see also *Parkhurst v. Van Winkle*, 786 N.E.2d 1159, 1160-62 (Ind. Ct. App. 2003). As used in the protective order statute, “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.” I.C. § 35-45-10-1. Phipps argues that Gray failed to present sufficient evidence to prove that Phipps had stalked him and was therefore entitled to a protective order. For two reasons, we conclude that Phipps has failed to meet her reduced burden of establishing *prima facie* error.

First, Phipps' contentions on appeal are almost entirely based on the materials presented to the trial court in her Motion to Re-Open, Re-Hear and Re-Consider. The trial court denied that motion, and for good reason: Phipps admitted that she was prepared to give the proposed testimony at the earlier hearing but decided not to because she "didn't think it would be allowed." Other than stating that she "would like to give additional oral Testimony," Phipps makes no argument that the trial court erred in denying her motion, and she fails to otherwise explain why we should consider her supplemental materials. (Appellant's Br. p. 6).

Second, even if we could consider the materials relied upon by Phipps, she has failed to support her contentions with cogent reasoning or citations to authorities and the record on appeal, as required by Indiana Appellate Rule 46(A)(8)(a).² Her brief is simply her side of the story, with no argument as to why we should reweigh the testimony of and judge the credibility of Gray and the other five witnesses who testified on his behalf at the protective order hearing. In addition to that testimony, the transcript of the hearing indicates that Gray's petition for a protective order included copies of multiple letters and e-mails written by Phipps. Phipps has not provided us with copies of those letters and e-mails, which we can only assume support Gray's claim that Phipps was stalking him.

² Phipps did not file an appendix. She did provide us with a transcript of the protective order hearing, but she does not cite it. Also, she refers to *VanHorn v. State*, 889 N.E.2d 908 (Ind. Ct. App. 2008), *trans. denied*, in which we reversed a criminal conviction for stalking, but she makes no effort to apply that holding to the facts of this case.

Given the flaws in Phipps' brief and the state of the record before us, we must affirm the trial court's grant of a protective order in favor of Gray.

CONCLUSION

Based on the foregoing, we conclude that the trial court did not err in granting a protective order against Phipps and in favor of Gray.

Affirmed.

DARDEN, J., and VAIDIK, J., concur.