



## Case Summary

Martha J. Tichenor appeals the issuance of a protection order in favor of Daniel Dodson, Esther Gott, Al Gott, Mark Dodson, and Tammy Dodson. We reverse.

### Issues

Tichenor raises four issues, but we find one issue dispositive and restate that issue as whether the evidence is sufficient to sustain the issuance of a protection order.

### Facts

Tichenor, Esther, and Mark are adult children of seventy-three-year-old Daniel.<sup>1</sup> Al is married to Esther, and Tammy is married to Mark. Daniel, Esther, Al, Mark, and Tammy all live in Indiana, and Tichenor lives in Nevada. In August 2009, Daniel's wife of fifty-three years, Mary, died. Shortly thereafter, Tichenor, who is estranged from her family, started sending disturbing emails to Esther and Mark.

On September 1, 2009, Tichenor sent an email expressing her disdain for Mary and Daniel and stating that the world was a better place without Mary, that Mary was where she deserved to be, that she had predicted Mary's death, that her other family members would "face God one day" and they "never kn[e]w when that might be." Tr. p. 170. Tichenor stated that she planned to have a DNA analysis done on Mary "by whatever means the court allows" even if she had "to have her body exhumed." *Id.* at 171. A September 17, 2009 email accused Daniel and Mary of lying about Tichenor, and Tichenor stated that she had disowned Daniel. She accused her siblings of letting Mary control them from her grave.

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<sup>1</sup> Errol Dodson is also an adult child of Daniel, but he is not a party to the protection order.

A September 18, 2009 email encouraged the family to sue Mary's doctors as a result of her death. An October 5, 2009 email castigated the family for failing to have an autopsy performed and graphically detailed twenty-six "stages of death" and the decomposition of a body. Id. at 175.

An October 10, 2009 email stated that God was punishing them and that "God will punish all of you." Id. at 127. Tichenor accused Daniel of failing to tell other family members of Mary's illness, accused Esther of keeping Daniel from other family members, and said that Esther would be sued. Tichenor stated that in 2007 she predicted that Mary "would be stricken" and would have a stroke and that her prediction came true. Id. at 128. After detailing alleged abuse she endured as a child from Mary, Tichenor stated "DAD got to watch his evil counter part [sic] go down, so he pays too for all he did. He will continue to pay and so will all of you until you make things right with GOD." Id. at 129.

On October 22, 2009, Tichenor sent a twenty-page email to Esther and Mark regarding another brother, Errol, and his wife, Dana. Tichenor said that Dana would find out there is a God, that Dana should not drive with the kids in the vehicle because of a vision Tichenor saw, that Dana would pay for what she had done, and that God would remove Dana "from the picture in due time." Id. at 140. Tichenor said that she prayed God would free Daniel from Mary and God did so. She also said that Daniel owed the children an apology or he would burn in Hell with Mary.

A November 24, 2009 email from Tichenor detailed her claimed ability of prophecy, which she said was a gift from God enabling her to see things that will happen

in the future. Tichenor said that Mary and Daniel had stolen from her and abused her and that “GOD punished them and all of you had better change your ways before it is too late. God punishes EVIL.” Id. at 164. Tichenor said that Esther and her husband would “stand in Judgement [sic] of God one day for that as well as all your other lies and deceit. I see nothing but Bad things ahead for both of you and God has shown me this. It will be in God’s time, but it is coming. You will not be able to hide it from me either, God tells me and I know of your present unrest.” Id. at 167.

The emails continued with Tichenor sending similar emails to Esther and Mark on December 20, 2009, December 31, 2009, February 2, 2010, April 11, 2010, and April 20, 2010. In the April 11, 2010 email, Tichenor said that Esther and Mark were scum of the earth, “rotten back stabbing pigs,” and “liars, users and thieves.” Id. at 180. Esther was concerned about the emails and showed them to Daniel to alert him. Tichenor also repeatedly called Adult Protection Services and the police to have welfare checks done on Daniel.

On February 4, 2010, Daniel requested a protection order against Tichenor and alleged that Tichenor had committed stalking against him. The trial court issued an ex parte protection order. Service was attempted on Tichenor’s former Indianapolis attorney, but he informed the trial court that he did not represent Tichenor and that good service had not been obtained. Tichenor sent a letter to the trial court on March 15, 2010, alleging that she was not served with notice of the protection order and that the allegations in Daniel’s request were false. The trial court set the matter for hearing. Prior to the hearing, Daniel filed a motion to amend the protection order to include Esther, Al,

Mark, and Tammy because they had been subjected to harassing communications from Tichenor. Tichenor appeared at the hearing, and the trial court issued an order granting the protection order as to all of the petitioners. Tichenor later filed a letter requesting a “full and complete (Basis)” for the trial court’s decision. App. p. 65. The trial court responded that it could not “provide any information beyond the contents of the Court’s Order for Protection . . . .” Id. at 74. Tichenor now appeals.

### **Analysis**

Tichenor argues that the evidence is insufficient to support the issuance of the protection order. In reviewing the sufficiency of the evidence to support an order for protection, we neither reweigh the evidence nor judge the credibility of witnesses. Tisdial v. Young, 925 N.E.2d 783, 785 (Ind. Ct. App. 2010). We consider only the probative evidence and reasonable inferences supporting the trial court’s judgment. Id.

Daniel and the other petitioners requested and the trial court entered its order under the Civil Protection Order Act (“CPOA”), Indiana Code Chapter 34-26-5. Under the CPOA,

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 [Indiana Code section] 35-45-10-5 or a sex offense under [Indiana Code chapter] 35-42-4 against the petitioner.

Ind. Code § 34-26-5-2(a). Daniel alleged and the trial court found that Tichenor had committed stalking.

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. “Harassment” is defined 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.” I.C. § 35-45-10-2. “[I]mpermissible contact’ includes but is not limited to knowingly or intentionally following or pursuing the victim.” I.C. § 35-45-10-3.

Tichenor argues that she sent the emails to Esther and Mark, not Daniel. She argues that she had no direct contact with Daniel and could not have committed stalking against him. Stalking involves repeated or continuing harassment, which involves “conduct directed toward a victim.” I.C. § 35-45-10-2. In support of their argument that Tichenor’s emails to Esther and Mark constitute stalking directed toward Daniel, Petitioners compare the situation to harassing voicemail messages left in Smith v. State, 802 N.E.2d 948 (Ind. Ct. App. 2004). However, in Smith, the voicemail messages were left directly on the victim’s voicemail. Here, it is undisputed that Tichenor did not send the emails to Daniel. Although the statute does not require direct contact between the aggressor and the victim, we have required some evidence that the actor directed the conduct toward the victim. See Tisdial, 925 N.E.2d at 786 (holding that stalking requires

some evidence that the actor is the one looking for the victim). Some of Tichenor's emails criticized Daniel, but none of the emails were sent to or directed toward Daniel.<sup>2</sup> As a result, we conclude that the evidence is insufficient to sustain the protection order for Daniel against Tichenor.

Tichenor also argues that the remaining petitioners did not feel terrorized, frightened, intimidated, or threatened. The conduct must "cause a reasonable person to feel terrorized, frightened, intimidated, or threatened" and "actually cause[] the victim to feel terrorized, frightened, intimidated, or threatened." I.C. § 35-45-10-1 (emphasis added). There is no evidence in the record to show that the remaining petitioners were "terrorized, frightened, intimidated, or threatened" by Tichenor. *Id.* Although Daniel testified that he was concerned, frightened, and unable to sleep well as a result of Tichenor's emails, the remaining petitioners did not testify that they felt terrorized, frightened, intimidated, or threatened by the emails. As a result, the evidence is also insufficient to sustain the protection order in favor of the remaining petitioners, Esther, Al, Mark, and Tammy.

Although the petitioners are understandably disturbed and frustrated by Tichenor's repeated emails, her conduct here simply does not fall under the protection order statute. Tichenor's conduct may well qualify the petitioners for some other type of relief, but the evidence is insufficient to establish a protection order.

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<sup>2</sup> We do not mean to say that sending an email to a third person can never constitute stalking against a victim. Although we can envision circumstances in which an email sent to a third party is directed toward the victim, we conclude that the emails at issue here do not fall under the CPOA.

## **Conclusion**

The evidence is insufficient to sustain the protection order. Consequently, we reverse.

Reversed.

BAKER, J., and VAIDIK, J., concur.