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APPELLANT PRO SE:

MARTHA J. TICHENOR
Henderson, Nevada

IN THE
COURT OF APPEALS OF INDIANA

MARTHA J. TICHENOR,	)	
	)	
Appellant,	)	
	)	
vs.	)	No. 41A04-1010-PO-00667
	)	
DANA DODSON,	)	
	)	
Appellee.	)	

APPEAL FROM THE JOHNSON SUPERIOR COURT
The Honorable G. Thomas Gray, Special Judge
Cause No. 41D03-0910-PO-00188

June 10, 2011

MEMORANDUM DECISION – NOT FOR PUBLICATION

MATHIAS, Judge

Dana Dodson ("Dodson") was granted a civil protection order against Martha J. Tichenor ("Tichenor"). Tichenor appeals and presents one issue for our review, which we restate as whether Dodson presented sufficient evidence to support the trial court's issuance of the civil protection order under the Indiana Civil Protection Order Act ("the CPOA").[1] We affirm.

Facts and Procedural History

Dodson is married to Tichenor's brother, Errol Dodson ("Errol"). In October 2009, Tichenor sent Errol a twelve-page letter via certified mail discussing various family issues. In the first line of the letter, Tichenor encouraged Errol to share the information contained therein with Dodson. Tichenor made repeated reference to Dodson throughout the letter, including the following passages:

> God punishes those that rise against me. I was prayed over and named after MARTHA BURNS. You say there is "no heaven or hell, no God". ALL this comes from [DODSON] and you damn well know it. She will find out that there is a GOD. Tell her not to drive with the kids in the Vehicle. This is the vision I see. It is all GOD. [Dodson] will pay for what she had done. ALL DEBTS GET PAID IN FULL. GOD IS ALWAYS ON (MY) SIDE.
>
> * * *
>
> You owe me an apology or I will drop you ERROL and NEVER help you again. Now this is just what [DODSON] wants and that is why [DODSON] will be stricken by GOD. You will see Errol. I have said it before and I am just waiting.
>
> * * *
>
> GOD WILL REMOVE [DODSON] FROM THE PICTURE IN DUE TIME.

Appellant's App. pp. 7, 9. Errol showed the letter to Dodson, who found Tichenor's statements about her to be "very disturbing." Tr. p. 2.

[1] Tichenor's conspiracy theories and claims of judicial bias are baseless, and we therefore decline to address them.

On October 20, 2009, Dodson filed a petition for a civil protection order alleging that Tichenor had, among other things, committed an act of domestic violence against Dodson by placing her in fear of physical harm.[2] Dodson attached a copy of Tichenor's letter to Errol to the petition. After several continuances, the trial court held a hearing on September 24, 2010, at which both Dodson and Tichenor testified. At the conclusion of the hearing, the trial court granted the petition. Tichenor now appeals.

Discussion and Decision

At the outset, we note that Dodson did not file an appellee's brief. Accordingly, we apply a less stringent standard of review and may reverse if the appellant establishes prima facie error. Aiken v. Stanley, 816 N.E.2d 427, 430 (Ind. Ct. App. 2004). Prima facie means "'at first sight, on first appearance, or on the face of it.'" Id. (quoting Parkhurst v. Van Winkle, 786 N.E.2d 1159, 1160 (Ind. Ct. App. 2003)). However, this rule is not intended to benefit the appellant, but rather to relieve this court of the burden of developing arguments on the appellee's behalf. State v. Moriarty, 832 N.E.2d 555, 558 (Ind. Ct. App. 2005). The burden of demonstrating trial error remains with the appellant. State v. Combs, 921 N.E.2d 846, 850 (Ind. Ct. App. 2010).

Tichenor argues that there was insufficient evidence to support the issuance of the civil protection order against her. In reviewing the sufficiency of the evidence to support the issuance of such an order, we apply the familiar test for determining the sufficiency of evidence. See Tons v. Bley, 815 N.E.2d 509, 511 (Ind. Ct. App. 2004). Thus, we neither

[2] We need not address Dodson's additional allegations because they do not influence our conclusion.

reweigh the evidence nor resolve questions of credibility, and we look only to evidence supporting the trial court's judgment, together with the reasonable inferences to be drawn therefrom. Id.

The General Assembly has indicated that the CPOA "shall be construed to promote the: (1) protection and safety of all victims of domestic or family violence in a fair, prompt, and effective manner; and (2) prevention of future domestic and family violence." Ind. Code § 34-26-5-1 (2011); Aiken, 816 N.E.2d at 430. Under Indiana Code section 34-26-5-2(a) (2011):

> 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.

In relevant part, "domestic or family violence" means, except for an act of self-defense, placing a family or household member in fear of physical harm. Ind. Code § 34-6-2-34.5(2) (2011). The definition of "family or household member" includes an individual who is or was related by marriage to the petitioner. Ind. Code § 34-6-2-44.8 (2011). Additionally, Indiana Code section 34-26-5-9(f) (2011) provides as follows:

> A finding that domestic or family violence has occurred sufficient to justify the issuance of an order under this section means that a respondent represents a credible threat to the safety of a petitioner or a member of a petitioner's household. Upon a showing of domestic or family violence by a preponderance of the evidence, the court shall grant relief necessary to bring about a cessation of the violence or the threat of violence.

Tichenor concedes that she is a family or household member of Dodson's as defined by the CPOA and that she wrote the letter to Errol. Nevertheless, Tichenor argues that the letter was insufficient to prove by a preponderance of the evidence that Tichenor committed an act of domestic or family violence. Specifically, she asserts that contents of the letter, "while not cordial and probably annoying to [Dodson], did not raise [sic] to the level of threats." Appellant's Br. at 11. But subsection (2) of the definition of domestic or family violence does not require proof of threats; rather Dodson need only prove by a preponderance of the evidence that Tichenor placed her in fear of physical harm. See I.C. § 34-6-2-34.5(2); Aiken, 816 N.E.2d at 431-32. As we noted in Aiken, "[i]f our legislature had intended to define 'domestic or family violence' in terms of specific threats or actions, it could have done so." Id. at 432.

In Tichenor's letter to Errol, Tichenor wrote that "GOD IS ALWAYS ON (MY) SIDE" and that God would "REMOVE [DODSON] FROM THE PICTURE IN DUE TIME." Tr. pp. 7-9. Tichenor went on to state that Dodson would be "stricken" and that Dodson would "pay for what she had done." Id. at 7. Tichenor even went so far as to insinuate that Dodson would be injured or killed in a car accident. Id. At the hearing, Dodson testified that these comments made her uncomfortable and that she found them to be "very disturbing." Tr. pp. 2, 4. Even assuming that these statements do not constitute threats, they are sufficient to establish by a preponderance of the evidence that Tichenor committed an act of domestic or family violence by placing Dodson in fear of physical

harm.[3] We therefore conclude that Tichenor has not established prima facie error and that the trial court's decision to issue a civil protection order was supported by sufficient evidence.

Affirmed.

VAIDIK, J., concurs.

KIRSCH, J., dissents without opinion.

[3] Tichenor also argues that Dodson presented insufficient evidence to establish that she committed stalking. See I.C. § 34-26-5-2(a)(2). Because we conclude that Dodson was entitled to a protective order because she presented sufficient evidence to establish that Tichenor committed an act of domestic or family violence, we need not address this argument.