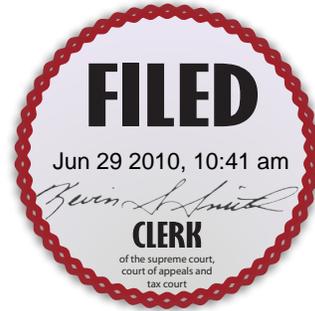


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE  
COURT OF APPEALS OF INDIANA**

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|-----------------------|---|-----------------------|
| KATHY HARDESTY,       | ) |                       |
|                       | ) |                       |
| Appellant-Respondent, | ) |                       |
|                       | ) |                       |
| vs.                   | ) | No. 08A04-1001-PO-117 |
|                       | ) |                       |
| LARRY VICKERY,        | ) |                       |
|                       | ) |                       |
| Appellee-Petitioner.  | ) |                       |

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APPEAL FROM THE CARROLL CIRCUIT COURT  
The Honorable Donald E. Currie, Judge  
Cause No. 08C01-0912-PO-73

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**June 29, 2010**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**NAJAM, Judge**

## STATEMENT OF THE CASE

Kathy Hardesty appeals the trial court's entry of an Order for Protection ("protective order") against her pursuant to a petition filed by Larry Vickery, pro se.<sup>1</sup> Hardesty presents a single issue for our review, namely, whether the evidence is sufficient to support the entry of the protective order. We conclude that there is evidence sufficient to show more than one incident in which Hardesty threatened Vickery or Jennifer Ledbetter, Vickery's wife, and that Ledbetter actually felt threatened. Therefore, we affirm.

## FACTS AND PROCEDURAL HISTORY<sup>2</sup>

Vickery and Ledbetter live on North Parsonage Street in Yeoman. The side boundary of Vickery's property abuts the rear boundary of Hardesty's property. A six-foot tall wooden fence separates the properties and sits on Vickery's property one foot from the boundary.

In the summer of 2009, Vickery's truck sustained damage while parked on his property. One week afterward, while Vickery and Ledbetter were standing outside discussing the truck damage with a neighbor, Hardesty "just [came] running out there yelling" and said to Vickery, "You fat son of a bitch next time it's going to cost you more[.]" Transcript at 20. Vickery and Ledbetter interpreted Hardesty's statement to

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<sup>1</sup> The record is unclear whether Ledbetter was also a petitioner. Whether or not Ledbetter is listed as a petitioner has no practical impact because she is listed as a person to be protected under the order of protection.

<sup>2</sup> The Statement of Facts included argument, which is inappropriate in that part of an appellate brief. Harness v. Schmitt, 924 N.E.2d 162, 169 (Ind. Ct. App. 2010) (citing County Line Towing, Inc. v. Cincinnati Ins. Co., 714 N.E.2d 285, 289 (Ind. Ct. App. 1999), trans. denied). Appellant's comments are in large part the kind of "transparent attempt to discredit [appellant's] argument" that we disapproved in County Line Towing. We emphasize that the Statement of Facts is only "a vehicle for informing this court." Id.

mean that she had caused the damage to Vickery's truck. The damage to the truck shown in photographs "match[ed] up perfectly" with the ram guard of Hardesty's vehicle. Id.

On December 1, 2009, Vickery was standing in his yard when he heard Hardesty say loudly from the other side of the fence that she wanted to "blow [Vickery's] legs off" and she "wished she had some type of bomb or landmines to blow [Vickery] up[.]" Id. at 6. Vickery understood that Hardesty was not speaking to him, but she was speaking loud enough for him to hear and named him. Ledbetter was nearby and also heard Hardesty's statement. That evening, someone from Hardesty's side of the fence shined a "little red dot" on Ledbetter's forehead while Ledbetter was in the living room. And Ledbetter stopped walking her dog along the road because Hardesty said she was going to run over Ledbetter and the dog.

On December 2, Vickery filed a petition seeking an order of protection against Hardesty. Following an evidentiary hearing, the court granted the petition and entered an order of protection. Hardesty now appeals.

### **DISCUSSION AND DECISION**

Hardesty contends that the trial court erred when it issued the protective order because the evidence is insufficient to show that she stalked Vickery or Ledbetter. In determining the sufficiency of the evidence on appeal, we neither weigh the evidence nor resolve questions of credibility. See Tons v. Bley, 815 N.E.2d 508, 511 (Ind. Ct. App. 2004). We look only to the evidence of probative value and reasonable inferences that support the trial court's judgment. Id.

We observe initially that Vickery has not filed an appellee's brief. In such a case, we need not undertake the burden of developing arguments for him. See Splittorff v. Aigner, 908 N.E.2d 669, 671 n.2 (Ind. Ct. App. 2009), trans. denied. Applying a less stringent standard of review, we may reverse the trial court if the appellant establishes prima facie error. Id.

The Civil Protection Order Act ("the Act") authorizes "a person who is or has been a victim of domestic . . . violence" to file a petition for an order for protection. Ind. Code § 34-26-5-2. For purposes of the Act, "domestic and family violence" includes stalking. Essany v. Bower, 790 N.E.2d 148, 154 (Ind. Ct. App. 2003). There is no requirement that the alleged stalking be committed by a family or household member. See id. Therefore, a person who alleges that she is a victim of stalking, even where the alleged stalker is a stranger to the victim, may seek a protection order against the alleged stalker. See id.

Indiana Code Section 35-45-10-1 defines stalking as a knowing or 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. The term does not include statutorily or constitutionally protected activity. Id. Upon a showing of domestic violence, such as stalking, "by a preponderance of the evidence, the trial court 'shall grant the relief necessary to bring about a cessation of the violence or the threat of violence.'" Moore v. Moore, 904 N.E.2d 353, 358 (Ind. Ct. App. 2009) (quoting Ind. Code § 34-26-5-9(f)).

Here, Hardesty contends that there is no evidence that she threatened Vickery or Ledbetter directly. But Hardesty cites no legal authority in support of her contention that a communication must be made directly to the victim, and not just within the victim's perception, in order to qualify as a threat under the definition of stalking in Indiana Code Section 35-45-10-1. She also contends that there is no evidence to show that she was on Vickery's property when the red light was shined into his window and that there was no context, such as time, for the allegation Hardesty threatened to run over Ledbetter and her dog. Again, Hardesty has not supported those arguments with citation to legal authority demonstrating that such evidence is required to prove stalking. As such, those arguments are waived. See Ind. Appellate Rule 46(A)(8)(a).

Hardesty next argues that the evidence is insufficient to show more than one incident of threat or intimidation. We cannot agree. The evidence of probative value and reasonable inferences that support the trial court's judgment show that in the summer of 2009, while Vickery and Ledbetter were discussing Vickery's recently damaged truck with others, Hardesty told him, "next time it's going to cost you more[.]" Transcript at 6, 20. On December 1, Hardesty said, loudly and within Vickery's earshot, that she wanted to blow his legs off and wished she had a bomb to do so. Later that night, someone shined a light over the six-foot-tall fence from Hardesty's side of the property into Vickery's house, creating a small red dot on Ledbetter's forehead. And Hardesty also threatened to run over Ledbetter and her dog.<sup>3</sup>

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<sup>3</sup> Vickery also listed another allegedly intimidating or threatening incident involving Hardesty driving into the gas station while Vickery was there. Having found at least two other incidents sufficient to support the trial court's order, we need not consider the gas station incident.

We conclude that this evidence demonstrates by clear and convincing evidence that Hardesty knowingly or intentionally engaged in a course of conduct involving repeated or continuing harassment of Vickery or Ledbetter that would cause a reasonable person to feel terrorized, frightened, intimidated, or threatened. Hardesty argues that the testimony from Vickery and Ledbetter was contradictory and inconsistent. But we cannot reweigh the evidence on appeal. Hardesty's contention that the evidence is insufficient to show that she threatened or intimidated Vickery or Ledbetter must fail.

Hardesty also contends that the evidence is insufficient to show that her conduct actually caused Vickery or Ledbetter to feel terrorized, frightened, intimidated, or threatened. Again, we cannot agree. A reasonable inference from the evidence is that Vickery actually believed Hardesty was threatening him. And Ledbetter testified that while she used to walk her dog, Hardesty threatened to run over Ledbetter and her dog and now Ledbetter no longer walks her dog. The evidence is sufficient to support the inference that Vickery and Ledbetter actually felt threatened by Hardesty's conduct, and Hardesty's assertions to the contrary on appeal are, again, merely requests for this court to reweigh the evidence. The trial court did not err when it issued the protective order against Hardesty.

Affirmed.

VAIDIK, J., and BROWN, J., concur.