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**IN THE
COURT OF APPEALS OF INDIANA**

STUART D. SIMONS,
Appellant-Respondent,

vs.

SUSAN SCHAU,
Appellee-Petitioner.

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No. 46A05-0901-CV-5

APPEAL FROM THE LAPORTE SUPERIOR COURT
The Honorable Steven E. King, Judge
Cause No. 46D02-0808-PO-105

July 8, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

NAJAM, Judge

STATEMENT OF THE CASE

Stuart D. Simons appeals from the trial court's entry of a Permanent Order for Protection ("protective order") against him pursuant to a petition filed by Susan Schau. Simons presents a single issue for our review, namely, whether the trial court erred when it issued the protective order.

We affirm.

FACTS AND PROCEDURAL HISTORY

Simons and Schau have lived in the same neighborhood in LaPorte County for approximately seventeen years. Simons lives alone, and Schau lives with her husband and children in a house located on more than eight acres. Simons' house is "quite a ways['']" away from Schau's house. Transcript at 10. Over the years, Schau and many of her neighbors "have had problems" with Simons. Id. at 11. Simons had complained about one neighbor's peacock making too much noise, and that neighbor subsequently found her peacock "dismantled." Id. Simons frequently calls the police and fire departments to complain about neighbors' conduct, such as cooking with a charcoal grill, planting flowers too close to the road, and the like. Schau testified that "[e]veryone in the neighborhood is afraid of [Simons]." Id. at 12.

Simons always wears black and frequently walks or drives up and down the street where Schau lives at "all hours of the night." Id. Schau testified that Simons will "stop on . . . [the] road [by her house] just like he's looking in." Id. As a result, Schau installed blinds on the windows of her house, and she and her family keep the blinds closed "so he can't see in." Id. at 13.

A few years ago, Simons came onto Schau's property, uninvited, and approached Schau's husband and son. Schau's husband told Simons to leave and to stay off of the property. More recently, during the late evening of August 1, 2008, Schau was home, alone, sitting on her back deck, listening to music. Simons drove to Schau's house, parked at the end of the long driveway, close to the street, walked up to the house, and approached Schau. Simons did not announce his arrival. Instead, Schau suddenly turned around and saw Simons standing approximately two feet behind her. Schau was scared and "jumped up like a jungle cat." Id. at 18. Schau yelled at Simons, and Simons asked Schau to turn the music down. Schau screamed at Simons to leave her property. Simons did not move. Schau became more frightened, and she hit Simons' shoulder, but he did not move. Finally, Schau yelled, "Get the hell out of here!" Id. at 19. But Simons still refused to leave. Finally, Schau threatened to call the police, and Simons left.

Since that incident, Schau and her family have restricted their outdoor activities at night and keep a baseball bat by the front door. Schau installed panic buttons in the house and bought a German shepherd from the police department for protection. And on August 22, 2008, Schau filed a petition seeking a protective order. Following a hearing on September 19, 2008, the trial court issued the protective order enjoining Simons from stalking Schau and her family; barring Simons from Schau's property; barring Simons from walking along Grand Beach Road, where Schau's house is located; and prohibiting him from using or possessing a firearm or other deadly weapon. This appeal ensued.

DISCUSSION AND DECISION

Simons contends that the trial court erred when it issued the protective order because the evidence is insufficient to show that he stalked Schau. We cannot agree. The petitioner for a protective order must prove by clear and convincing evidence at least one of the allegations of her petition. Tons v. Bley, 815 N.E.2d 508, 511 (Ind. Ct. App. 2004). In determining the sufficiency of the evidence on appeal, we neither weigh the evidence nor resolve questions of credibility. See id. We look only to the evidence of probative value and reasonable inferences that support the trial court's judgment. Id.

Part of the Civil Protection Order Act ("CPOA"), Indiana Code Section 34-26-5-2, provides in relevant part that a person who is or has been a victim of domestic or family violence may file a petition for an order of protection against a person who has committed stalking under Indiana Code Section 35-45-10-5 against the petitioner. This court has explained that, for purposes of the CPOA, "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.

Here, Simons contends that there is no evidence that he repeatedly or continually harassed or threatened Schau. And he maintains, for the first time on appeal,¹ that “the majority of complaints made by Schau involve constitutionally protected activities” such as walking, driving, and parking on a public street. Brief of Appellant at 13. But Schau testified that she and others in the neighborhood have had problems with Simons for years and that he is a nuisance. Schau testified that “[e]veryone in the neighborhood is afraid of [Simons.]” Transcript at 12. Further, the evidence shows that Simons always wears black, and, “quite occasionally,” Simons “walks up and down the street at all hours of the night.” Id. at 12-13. Simons stops on the road in front of Schau’s house, and Schau feels “like he’s looking in.” Id. at 12. Schau installed blinds on the windows in her house and keeps the blinds closed “so [Simons] can’t see in.” Id. at 13.

In addition, a few years ago, Simons came onto Schau’s property without being invited, and Schau’s husband told Simons to leave. And on August 1, 2008, Simons parked at the end of Schau’s driveway, walked up to Schau, who was sitting outside on the back deck, and stood approximately two feet away from Schau without announcing himself. Schau was “scared” and “jumped up like a jungle cat.” Id. at 18. Schau yelled at Simons to leave, but he refused. Finally, Schau threatened to call the police, and Simons left.

¹ Simons has asserted inconsistent positions to the trial court and to this court. At the hearing, Simons denied “walk[ing] around the neighborhood at night.” Transcript at 32. But on appeal, Simons contends that he has a constitutional right to walk around the neighborhood.

We hold that Schau has demonstrated by clear and convincing evidence that Simons knowingly or intentionally engaged in a course of conduct involving repeated harassment² of Schau that would cause a reasonable person to feel frightened and that did, in fact, cause Schau to feel frightened. While Simons claims that he has a constitutionally-protected right to walk and drive up and down Schau's street, we remind him that voyeurism, which is defined as peeping³ into an occupied dwelling of another person without that person's consent, is a crime. See Ind. Code § 35-45-4-5(b). The trial court did not err when it issued the protective order against Simons.

Affirmed.

FRIEDLANDER, J., and VAIDIK, J., concur.

² "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. Ind. Code § 35-45-10-2.

³ "Peeping" is defined as any looking of a clandestine, surreptitious, prying, or secretive nature. I.C. § 35-45-4-5(b).