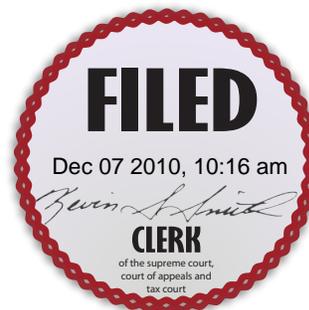


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE
COURT OF APPEALS OF INDIANA**

PAUL SCHULZ,)
)
 Appellant-Respondent,)
)
 vs.) No. 64A03-1005-PO-316
)
 KAREN SPOOR,)
)
 Appellee-Petitioner.)

APPEAL FROM THE PORTER SUPERIOR COURT
The Honorable Mary R. Harper, Judge
Cause No. 64D05-1004-PO-3380

December 7, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

BROWN, Judge

Paul Schulz appeals the trial court's order of protection against him pursuant to a petition filed by Karen Spoor. Schulz raises one issue, which we revise and restate as whether the evidence was sufficient to support the trial court's order of protection. We affirm.

The facts most favorable to the order granting protection follow. Schulz and Spoor first met in high school about twenty years ago and were acquaintances at that time. Around fourteen or fifteen years ago, Spoor introduced Schulz to a girlfriend of hers, and Schulz and the friend dated for years. In April or May of 2009, Schulz and the friend ended their relationship, and in June 2009 Schulz sent Spoor a card asking “[h]ow have you been lately,” and that “I’d like to talk with you . . . sometime.” Transcript at 8. At that time, Schulz and Spoor had not spoken for about six years. Spoor did not want to get “in the middle of something” and chose not to respond. Id.

In November 2009, Schulz sent a bottle of wine to Spoor's house and another bottle of wine to her mother's house. Schulz personally delivered the bottle of wine to the house of Spoor's mother, and at the door he was greeted by Spoor's brother, Matthew Gill. After Matthew spoke with Schulz, he sent Spoor a text message containing a picture of Schulz and saying that “[t]his guy was here, and he says he loves you. He sent you wine.” Id. at 12.

Spoor sent a Christmas card to Schulz in which she thanked him for the wine because she had for the past fifteen years sent cards to Schulz and her friend as a couple and was “thinking we’re friends, we’re acquaintances, you know, this is what people do .

. . . it might be the only contact they have all year.” Id. at 11. In the card, Spoor also indicated to Schulz that she did not “want to be involved” with the breakup between Schulz and Spoor’s girlfriend. Id. at 16.

Spoor received mail from Schulz “in bulk quantities” and in “handfuls” which “did freak [her] out,” and her brothers were receiving emails from Schulz during the same time period. Id. at 8, 12. On March 3, 2010, Schulz sent an email via Facebook to both Spoor’s brother Roger and her twin brother regarding a cousin of Spoor’s who had been murdered “20-some years ago.” Id. at 7. The email stated that Schulz:

[H]ad a conversation with [Roger’s] brother Allen recently.

I looked at the microfilm of the Post Tribune and Hammond Times March 4, 1989 yesterday.

So much more could be said.

I thought that it may be inappropriate to send a message like this to [Spoor]. Although I have only heard of you, and that we don’t know each other, you may like to see some of my photos.^[1]

Petitioner’s Exhibit 1.

On March 13, 2010, Schulz phoned Spoor’s house and spoke with her husband. Schulz told Spoor’s husband that he had dated Spoor five years ago, which was untrue. On March 28, 2010, Matthew Gill, by counsel, sent an email to Schulz stating “that you cease and desist immediately or you will be held liable for legal matters If you

¹ Schulz explained at the hearing that the photos he was referencing were his “photos on Facebook. . . . Those photos were photos of me on vacation around North America. . . . Over 1200 of them. And I just thought that the brother might like to see those photos on Facebook because both the brother Matt Gill and [Spoor] were friends with me on Facebook.” Transcript at 27.

contact [Matthew's] family again and/or [Spoor] and/or her husband and/or brothers we will have no choice but to take further legal action" Transcript at 18.

On April 1, 2010, Spoor filed a petition for an order for protection and request for a hearing against Schulz and alleged that she had been the victim of stalking. In her petition, Spoor made allegations regarding the wine delivery, the phone call to her house, and that Schulz had sent many letters and documents regarding his breakup with Spoor's girlfriend, had sent "emails via Facebook to [her] family that does not know him," and had sent a document relating to a recent arrest for disorderly conduct. Appellant's Appendix at 10. That same day, the trial court granted her petition pursuant to an *ex parte* order for protection.

The court held a protective order hearing on April 30, 2010, at which Schulz and Spoor both appeared *pro se*. After the parties were sworn, Spoor was given the first "opportunity to address the situation." Transcript at 4. Spoor testified to facts consistent with the foregoing and that Schulz is "preoccupied" with her, and that she was frightened for her and for her family because "he's contacted several of my older brothers." *Id.* at 9. Spoor testified that "I feel like I'm being pulled into the middle" of Schulz's breakup and that "a lot of times that's the person who gets – you know, bad things can happen to them. . . . I've got to protect my family." *Id.* at 12. Spoor also testified that she knew that other people at the hospital where she and Schulz's ex-girlfriend work were receiving mailings from Schulz.

Spoor testified that Schulz has been “hanging out at the bar that’s right next to . . . [her] mother’s house where [her] brother frequents” called the Beer Barrel Tavern. Id. at 6. Spoor had been “friends” with Schulz on Facebook, but she “ex-friended” him “[w]hen the letters started coming.” Id. at 21. Spoor testified that she did not “want some crazy man coming in [to the hospital] with a gun some day and blowing away half of the people” that she works with. Id. at 20. Spoor also testified that she was “frightened” from the contact that she had been having with Schulz. Id. Spoor also testified that “[u]p until this point” Schulz had not been a threat to her. Id.

Spoor also referenced a letter Schulz sent to Spoor “about his arrest . . . he had for Disorderly Conduct.” Id. at 10. At the hearing, Schulz explained that Matthew Gill had told him that he “heard [Schulz] got arrested,” and Schulz “thought probably [Spoor] read about it in the newspaper.” Id. at 28. Schulz stated that he was “concerned about [his] own reputation,” so he sent “a copy of the report because it involves an officer . . . who’s got a federal brutality lawsuit against him and other allegations and so on,” to Matthew Gill and Spoor. Id.

At the conclusion of the hearing, the court ordered that the protective order which had been granted on April 1, 2010 “remain in full force and effect” because it believed “that the contact will not stop absent the protective order.” Id. at 31. The court stated:

There is a very disturbing dynamic to this situation. I’m not sure if it’s a mental health issue. I think possibly it is. I would find that the conduct evidenced on the record today and by the multiple mailings to [Spoor] and her family does, in fact, constitute repeated attempts to reach her, and are such that because of how global they are and the frequency would cause a

reasonable person to be placed in fear of their safety. I believe she did – while [Spoor] is trying to be pretty reserved about the effect on her, I do believe from what I’ve heard here that this is a situation which has caused her not only concern but fear.

Id.

The issue is whether the evidence was sufficient to support the trial court’s order of protection. To obtain an order of protection under the Civil Protection Order Act (“CPOA”), the petitioner must establish by a preponderance of the evidence at least one of the allegations in the petition. A.S. v. T.H., 920 N.E.2d 803, 806 (Ind. Ct. App. 2010). In reviewing the sufficiency of the evidence to support an order for protection, we neither reweigh the evidence nor judge the credibility of witnesses. Id. We consider only the probative evidence and reasonable inferences supporting the trial court’s judgment. Id.

Before addressing Schulz’s arguments we note that Spoor did not file an appellee’s brief. When an appellee fails to submit a brief, we do not undertake the burden of developing appellee’s arguments, and we apply a less stringent standard of review, that is, we may reverse if the appellant establishes prima facie error. Zoller v. Zoller, 858 N.E.2d 124, 126 (Ind. Ct. App. 2006). This rule was established so that we might be relieved of the burden of controverting the arguments advanced in favor of reversal where that burden properly rests with the appellee. Wright v. Wright, 782 N.E.2d 363, 366 (Ind. Ct. App. 2002). Questions of law are still reviewed *de novo*, however. McClure v. Cooper, 893 N.E.2d 337, 339 (Ind. Ct. App. 2008).

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). “The trial court may issue or modify an order for protection only upon a finding ‘that domestic or family violence has occurred.’” Tisdial v. Young, 925 N.E.2d 783, 785 (Ind. Ct. App. 2010) (quoting Ind. Code § 34-26-5-9(a), (f)). “The definition of ‘domestic or family violence’ for this purpose also includes stalking as defined in Ind. Code § 35-45-10-1 or a sex offense, ‘whether or not the stalking or sex offense is committed by a family or household member.’” Id. (quoting Ind. Code § 34-6-2-34.5). “Thus, the CPOA authorizes the issuance of an order for protection only where a petitioner shows violence by a family or household member, stalking, or a sex offense has occurred.”² Id. (citing Parkhurst v. Van Winkle, 786 N.E.2d 1159, 1161-1162 (Ind. Ct. App. 2003)).

Spoor’s petition alleged that she was the victim of 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

² The April 1, 2010 *ex parte* order for protection, which was affirmed by the trial court following the April 30, 2010 hearing, found that Spoor had “shown, by a preponderance of the evidence, that domestic or family violence, stalking, or a sex offense has occurred sufficient to justify the issuance of this Order.” Appellant’s Appendix at 15. However, Spoor did not allege, and the record does not reveal, that Spoor was the victim of domestic or family violence or a sex offense. Thus, we confine our review of the order to the allegation that Spoor was the victim of stalking.

terrorized, frightened, intimidated, or threatened.” Ind. Code § 35-45-10-1.³ “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. Also, “impermissible contact” is defined as contact that “includes but is not limited to knowingly or intentionally following or pursuing the victim.” Ind. Code § 35-45-10-3. This has been interpreted to require that one seeking an order of protection demonstrate that the “actor is the one looking for the victim.” Tisdial, 925 N.E.2d at 786.

Schulz argues that “[t]he evidence to establish harassment and impermissible contact falls far short.” Appellant’s Brief at 8. In support, Schulz argues that “[t]he letters, e-mails and telephone calls were not about Spoor and none of them contained threats to Spoor of any kind.” Id. Schulz argues that “[t]here is not sufficient evidence Spoor was emotionally distressed to the degree required to obtain an order of protection.”⁴ Id. at 5. Schulz’s argument is merely a request that we reweigh the

³ Stalking “does not include statutorily or constitutionally protected activity.” Ind. Code § 35-45-10-1.

⁴ Schulz also argues that “the evidence to support the entry of the order of protection against Schulz should be reversed because it was based on hearsay.” Appellant’s Brief at 17. We note that at the hearing, in which both parties appeared *pro se*, Schulz failed to object to any of the statements made by Spoor. Thus, Schulz has waived the issue. See Miles v. State, 777 N.E.2d 767, 771 (Ind. Ct. App. 2002) (“Failure to object at trial waives any claim of error and allows otherwise inadmissible hearsay evidence to be considered for substantive purposes and to establish a material fact at issue.”) (quoting Johnson v. State, 734 N.E.2d 530, 532 (Ind. 2000)).

evidence, which we cannot do. See, e.g., Fields v. Fields, 749 N.E.2d 100, 108 (Ind. Ct. App. 2001), trans. denied.

Here, the evidence favorable to the trial court's judgment demonstrated that soon after Schulz's relationship ended with a woman who was a friend of Spoor's, Schulz began to contact Spoor by various means. Schulz, who had not spoken with Spoor for the previous six years, sent Spoor a letter asking "[h]ow have you been lately," and that "I'd like to talk with you . . . sometime." Transcript at 8. Schulz started sending "handfuls" of mail and email messages to Spoor and four of Spoor's brothers, some of whom he had never met. Id. In November of that year, after Spoor had not responded to Schulz's overtures, Schulz sent wine to both Spoor's and Spoor's mother's home. Schulz delivered the wine personally to Spoor's mother, and at the mother's house he met and spoke with Spoor's brother Matthew Gill. Matthew sent Spoor a picture text message of Schulz with the text that "[t]his guy was here, and he says he loves you. He sent you wine." Id. at 12. Schulz also spent time at the Beer Barrel Tavern, a bar which was close to Spoor's mother's house and which Matthew frequents.

On March 3, 2010, Schulz emailed two of Spoor's brothers regarding a cousin whose twenty-year anniversary of her murder was approaching. In the message, Schulz stated that "I thought that it may be inappropriate to send a message like this to [Spoor]." Petitioner's Exhibit 1. Schulz also invited Spoor's brother Roger, whom Schulz had never met, to "see some of [his] photos," which were on Facebook and were pictures of Schulz "on vacation around North America." Id.; Transcript at 27. On March 13, 2010,

Schulz phoned Spoor's home and spoke with her husband. Schulz untruthfully told Spoor's husband that she and Schulz had dated five years ago. Schulz also sent Spoor, as well as some of her brothers, a document relating to his recent arrest for disorderly conduct.

At the hearing, Spoor repeatedly told the court that the mailings and conduct by Schulz "did freak [her] out," that Schulz was "preoccupied" with her, and that it frightened her. Transcript at 9. Spoor testified that "I feel like I'm being pulled into the middle of it," and that "a lot of times that's the person who gets – you know, bad things can happen to them. . . . I've got to protect my family." *Id.* at 12. Spoor also testified that she did not "want some crazy man coming in [to the hospital] with a gun some day and blowing away half of the people" with whom she works. *Id.* at 20.

Schulz repeatedly contacted Spoor and her family by phone, mail, email, and in person. This contact, which began after a six-year period in which Spoor had no contact with Schulz, frightened Spoor. Such conduct would cause a reasonable person to feel frightened and it did, in fact, cause Spoor to feel frightened. Based upon the record, we cannot say that the trial court erred when it issued an order of protection against Schulz.

For the foregoing reasons, we affirm the trial court's grant of an order of protection against Schulz.

Affirmed.

DARDEN, J., and BRADFORD, J., concur.