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IN THE
COURT OF APPEALS OF INDIANA

MICHAEL LOVERDE,	)	
	)	
Appellant-Respondent,	)	
	)	
vs.	)	No. 64A03-1107-PO-327
	)	
THOMAS KUEHL,	)	
	)	
Appellee-Petitioner.	)	

APPEAL FROM THE PORTER SUPERIOR COURT
The Honorable Roger V. Bradford, Judge
Cause No. 64D01-1105-PO-4512

December 29, 2011

MEMORANDUM DECISION - NOT FOR PUBLICATION

BRADFORD, Judge

Appellant-Respondent Michael Loverde appeals the civil protection order granted against him and in favor of Appellee-Petitioner Thomas Kuehl. Loverde challenges the sufficiency of the evidence to support the trial court's issuance of the civil protection order. We reverse and remand.

FACTS AND PROCEDURAL HISTORY

Kuehl is married to Gina Kuehl, who is the daughter of Diana Hardison. Loverde is Hardison's live-in boyfriend/fiance. In approximately June of 2010, Gina visited Hardison and Loverde in Illinois. Gina injured herself on their property, prompting her and Kuehl to ask Loverde to submit the claim to his homeowner's insurance company. Loverde declined to do so. Later, after Gina had returned to Indiana, she called Loverde to again ask that he submit a claim. According to Kuehl, Loverde responded by threatening to kill Kuehl, Gina, and their daughter. Loverde also threatened to kill Kuehl's parents and, according to Kuehl, made multiple calls to Kuehl over a three-week period. Loverde does not dispute that he "went off" on Kuehl for not having insurance, but claims he did not make the alleged threats or call repeatedly over three weeks. Tr. p. 22.

In April of 2011, Loverde called Kuehl and threatened him following allegations that Kuehl had been beating a puppy. Loverde also called Gina and left her a message. According to Loverde, his threats were not credible and he did not follow up on them.

In May of 2011, according to Kuehl, Hardison sent a letter to Gina's ex-boyfriend telling him Gina's contact information. Hardison disputed that she had done this.

According to Loverde, he did send a letter, but it was apparently to Gina's daughter's biological grandmother to inform her that she had a granddaughter.

On May 18, 2011, Kuehl filed petitions for ex parte orders of protection against Loverde and Hardison, which the trial court granted. Following the respondents' request for a hearing, the trial court held a hearing on both matters on June 27, 2011. At the conclusion of the hearing, the trial court terminated the order of protection against Hardison, finding that Kuehl had failed to demonstrate domestic or family violence, stalking, or a sex offense. With respect to Loverde, however, the trial court extended the order of protection on grounds of domestic or family violence. In the trial court's view, in spite of the fact that Loverde was not married to Hardison, his relationship to Kuehl, who was Hardison's daughter's husband, was "close enough." Tr. p. 35. The trial court specifically excluded stalking as a viable ground for a protective order, finding that there was no evidence of stalking. This appeal follows.

DISCUSSION AND DECISION

I. Standard of Review

Loverde challenges the sufficiency of the evidence to support the civil order of protection against him by arguing that the "family" relationship serving as the basis for the order does not exist between him and Kuehl. Initially, we note that Kuehl did not submit an appellee's brief in this case. Where an appellee fails to file a brief on appeal, we need not undertake the burden of developing his argument. *Tisdial v. Young*, 925 N.E.2d 783, 784 (Ind. Ct. App. 2010). Instead, we will reverse the trial court's judgment if the appellant demonstrates prima facie error. *Id.* at 784-85. "Prima facie error in this

context is defined as, at first sight, on first appearance, or on the face of it." *Id.* at 785 (quotation omitted).

A petitioner for a protective order must prove, by a preponderance of the evidence, at least one of the allegations in his petition. *See Tons v. Bley*, 815 N.E.2d 508, 511 (Ind. Ct. App. 2004); *see* Ind. Code § 34-26-5-9(f) (2011). In reviewing the sufficiency of the evidence to support this order, we apply the familiar test for determining the sufficiency of the evidence. *Id*. We neither reweigh evidence nor resolve questions of credibility. *Id.* We look only to the evidence of probative value and reasonable inferences that support the trial court's judgment. *Id.*

II. The Civil Protection Order Act

The purpose of the Indiana Civil Protection Order Act ("CPOA") is 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). Indiana Code section 34-26-5-2(a) (2011) provides as follows:

> 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.

(Emphasis supplied).

"Domestic or family violence" includes (1) certain enumerated acts committed by a "family or household member" against another "family or household member"; (2)

stalking, or (3) a sex offense, whether or not the stalking or sex offense is committed by a "family or household member." *See* Ind. Code § 34-6-2-34.5 (2011).

There was no allegation of a sex offense in this case, and the trial court specifically found no evidence of stalking. Accordingly, the order of protection was based upon alleged acts committed by a "family or household member" against another "family or household member." "Family or household member" is defined, in pertinent part, by Indiana Code section 34-6-2-44.8 as follows:

> (a) An individual is a "family or household member" of another person if the individual:
>
> (1) is a current or former spouse of the other person;
>
> (2) is dating or has dated the other person;
>
> (3) is engaged or was engaged in a sexual relationship with the other person;
>
> (4) is related by blood or adoption to the other person;
>
> (5) is or was related by marriage to the other person;
>
> (6) has or previously had an established legal relationship:
>
> (A) as a guardian of the other person;
>
> (B) as a ward of the other person;
>
> (C) as a custodian of the other person;
>
> (D) as a foster parent of the other person; or
>
> (E) in a capacity with respect to the other person similar to those listed in clauses (A) through (D); or
>
> (7) has a child in common with the other person.

III. Analysis

Here, the relationship at issue is between Hardison's boyfriend (Loverde) and her son-in-law (Kuehl). Loverde and Hardison are unmarried, so Loverde is not related by marriage to any of Hardison's family members, including her son-in-law Kuehl. Accordingly, subsection (5) above, which by its plain language requires marriage, does

not apply.[1] None of the other above subsections even remotely fits the facts of this case. We must therefore conclude that, to the extent certain acts occurred between Loverde and Kuehl, these were not acts between "family or household members," able to support a civil order of protection as a remedy. As this court has previously concluded, orders of protection under the CPOA were not intended to serve as a remedy for situations involving fighting between unrelated persons. *See Tisdial*, 925 N.E.2d at 786 (reversing civil order of protection based upon nonstalking, nonsexual behavior between unrelated persons). Of course, this is not to say that there are no remedies available for unrelated parties. Protection orders are fully available when stalking or sex offenses are established, regardless of familial relationships. *See* Ind. Code § 34-6-2-34.5. In addition, injunctive relief is available for plaintiffs seeking to restrain the commission or continuance of some act. *See* Ind. Code § 34-26-1-5 (cited in *Tisdial*, 925 N.E.2d at 786 n.5). To the extent the behavior at issue constitutes a crime or a civil tort, relief may also be available on these bases. *See Tisdial*, 925 N.E.2d at 786 n.5.

Here, however, relief was sought in the form of a civil protection order, which is not available for non-family members who cannot demonstrate stalking or a sex offense. Having found Loverde has met his burden to show prima facie error, we reverse the order of protection against him and remand with instructions to vacate such order and any extension thereof.

[1] The General Assembly is not always constrained by the bounds of marriage when defining familial relationships. *See* Indiana Code section 35-42-2-1.3, which includes persons living "as if" they are spouses when defining domestic battery. Here, at least under subsection (5), which is the only applicable subsection, the relationship is defined exclusively by marriage.

The judgment of the trial court is reversed, and the cause is remanded with instructions.

KIRSCH, J., and BARNES, J., concur.