STATE OF INDIANA
COURT OF APPEALS

K K Appellant(s), v. B B Appellee(s).	Cause No. 24A-PO-02138

CERTIFICATION

STATE OF INDIANA)
) SS:
Court of Appeals)

I, Gregory R. Pachmayr, Clerk of the Supreme Court, Court of Appeals and Tax Court of the State of Indiana, certify the above and foregoing to be a true and complete copy of the Opinion of said Court in the above entitled case.

IN WITNESS WHEREOF, I hereto set my hand and affix the seal of THE CLERK of said Court, at the City of Indianapolis, this on this the 20th day of May, 2025.

Gregory R. Pachmayr,
Clerk of the Supreme Court

MEMORANDUM DECISION

IN THE

Court of Appeals of Indiana

K.K.,

Appellant-Respondent

v.

B.B.,

Appellee-Petitioner

March 24, 2025

Court of Appeals Case No.
24A-PO-2138

Appeal from the Putnam Superior Court

The Honorable Melinda K. Jackman-Hanlin, Magistrate

Trial Court Cause No.
67D01-2405-PO-70

Memorandum Decision by Judge Tavitas
Chief Judge Altice and Judge Brown concur.

Tavitas, Judge.

Case Summary

[1] B.B. ended her intimate relationship with K.K. and requested that K.K. not contact her. K.K., however, continued to contact B.B. over the phone and social media and appeared at locations where B.B. was present at the university they both attended. B.B. petitioned for a protection order, which the trial court granted. K.K. appeals and argues that the trial court clearly erred by granting the protection order. Because the record contains no evidence that K.K. presented a present credible threat to B.B., we reverse the trial court's judgment.

Issue

[2] K.K. raises one issue, which we restate as whether the trial court clearly erred by finding that K.K. presented a present credible threat to B.B.

Facts

[3] B.B. and K.K. met in high school in 2018. By 2021, the friendship had evolved into a toxic sexual relationship. K.K. would "isolat[e]" B.B., was "controlling," and would use sex and self-harm as a "bargaining chip." Tr. Vol. II p. 9. When B.B. did not want to have sex, K.K. would threaten to self-harm or abuse substances "because [K.K.] knew that harming herself would harm [B.B.] more than [K.K.] harming [B.B.]." *Id.* at 10.

[4] B.B. graduated high school before K.K. and attended a university. In 2020, during the Covid-19 lockdown, the university did not allow guests in student

dorms. Although B.B. informed K.K. that she did not want guests, K.K. drove to B.B.'s dorm anyway. K.K. ingested "pills," became intoxicated, and could not drive home, so she spent the night. *Id*. at 11.

[5] K.K. later graduated high school and attended the same university as B.B. In late 2022, B.B. ended the relationship and asked K.K. not to contact her. K.K., however, continued to call and text B.B. "continuously." *Id*. at 12. B.B. blocked K.K.'s phone number, but K.K. then began to contact B.B. over social media. After B.B. blocked K.K. on social media, K.K. began appearing at B.B.'s softball games and sorority events, although B.B. had asked her not to. On May 16, 2023, K.K. left a four-page handwritten letter to B.B. on the doorstep of B.B.'s sorority. In the letter, K.K. apologized for her conduct during the relationship and asked B.B. if she wished to reconnect.

[6] B.B. obtained a "no contact" order from the university. *Id.* at 14. According to B.B., K.K. never violated the order; however, she "push[ed] its limits" by continuing to appear at events B.B. attended, although K.K. did not have "direct communication" with B.B. *Id*. at 15. At one event B.B. was hosting, K.K. approached the table and began talking with the group B.B. was in, but B.B. left without speaking to K.K. B.B. feared that K.K. would engage in "irrational behavior" if she were not on her medication, and B.B. felt like she had to "continuously look over [her] shoulder." *Id*. at 16.

[7] Because B.B. was graduating and did not believe the university's no contact order would protect her thereafter, on May 3, 2024, B.B. petitioned for a civil

protection order against K.K. She alleged that K.K. placed her in "fear of physical harm"; "caused [her] to involuntarily engage in sexual activity by force, threat of force, or duress"; and committed "stalking" and "harassment[.]" Appellant's App. Vol. II p. 7. The trial court issued an *ex parte* protection order three days later. K.K. then filed a request for a hearing, and the trial court held a hearing on August 19, 2024.

[8] B.B. testified that K.K. never physically hurt her nor threatened to do so. B.B., however, believed that she needed the protection order to protect herself. K.K. admitted that she texted B.B. twice after the breakup but testified that she had not communicated with B.B. since writing the letter. She regretted writing the letter. She further claimed that she only attended the softball games because members of her own sorority were also on the team and that she only crossed paths with B.B. at the university because the campus was small.

[9] On August 22, 2024, the trial court issued the protection order. The trial court found that B.B. proved, "by a preponderance of the evidence, that domestic or family violence has occurred sufficient to justify the issuance of this order"; that K.K. "represents a credible threat to the safety of" B.B.; and that B.B. "has shown, by a preponderance of the evidence, that domestic or family violence, a sex offense, stalking, a course of conduct involving repeated or continuing contact with [B.B.] that is intended to prepare or condition [B.B.] for sexual activity . . . , or repeated acts of harassment has occurred sufficient to justify the issuance of this Order." *Id*. at 30.

[10] The order provides that K.K.: (1) "is hereby enjoined from threatening to commit or committing acts of domestic or family violence, stalking, sex offenses, a course of conduct involving repeated or continuing contact with [B.B.] that is intended to prepare or condition [B.B.] for sexual activity . . . , or harassment against [B.B.]"; (2) "is prohibited from harassing, annoying, telephoning, contacting, or directly or indirectly communicating with [B.B.]"; and (3) is "ordered to stay away from the residence, school, and/or place of employment of [B.B.]" as well as an additional address stated in the order. *Id.* at 30-31. K.K. now appeals.

Discussion and Decision

[11] K.K. argues that the trial court clearly erred by granting the protection order. Because the record contains no evidence that K.K. presented a present credible threat to B.B., we agree.

I. Standard of Review

[12] "'[A] trial court must make special findings of fact and conclusions thereon'" when entering a protection order. *L.R. ex rel. H.R. v. M.H. ex rel. N.H.*, 223 N.E.3d 675, 681 (Ind. Ct. App. 2023) (quoting *P.D. v. D.V.*, 172 N.E.3d 306, 310 (Ind. Ct. App. 2021)). We review the grant of a protection order by applying

> a two-tiered standard of review—we consider whether the evidence supports the court's findings and, if so, whether those findings support the judgment. In making these determinations, we neither reweigh the evidence nor determine the credibility of

> witnesses, and we consider only the evidence favorable to the trial court's decision.

S.D. v. G.D., 211 N.E.3d 494, 497 (Ind. 2023). Additionally, our Supreme Court has emphasized that:

> In close cases . . . the trial court is the one to make th[e] call. Indeed, our trial courts are far better than appellate courts at weighing evidence and assessing witness credibility. And this is particularly true in protective order cases, where our trial judges see and hear the parties interact as they relay details about intensely personal, traumatic events. Our review of this evidence on appeal is far less clear from our vantage point in the far corner of the upper deck.

Id. at 498. Ultimately, the appellant must demonstrate that the trial court clearly erred by granting the protection order. *P.D.*, 172 N.E.3d at 310 (citing *Fox v. Bonam*, 45 N.E.3d 794, 798 (Ind. Ct. App. 2015)).

II. The Indiana Civil Protection Order Act ("ICPOA")

[13] The purpose of the ICPOA is to promote the: "(1) protection and safety of all victims of domestic or family violence in a fair, prompt, and effective manner; (2) protection and safety of all victims of harassment in a fair, prompt, and effective manner; and (3) prevention of future domestic violence, family violence, and harassment." Ind. Code § 34-26-5-1. But as our Supreme Court has explained, the ICPOA

> is not one-sided. It balances the need to protect victims of domestic violence against the interests of those against whom a protective order is sought. Because of the potentially severe

> limitations on a restrained person's liberty, the petitioner must prove the respondent is a present, credible threat to the petitioner or someone in the petitioner's household.

S.H. v. D.W., 139 N.E.3d 214, 217 (Ind. 2020).

[14] The ICPOA provides, in relevant part:

> (a) 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[1] 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.
>
> (b) A person who is or has been subjected to harassment may file a petition for an order for protection against a person who has committed repeated acts of harassment against the petitioner.

Ind. Code § 34-26-5-2. As relevant here, "[d]omestic and family violence" includes stalking, as that term is defined by Indiana Code Section 35-45-10-1.[2] Ind. Code § 34-6-2-34.5.

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[1] The term "family or household member" includes, among other categories, a person with whom the person seeking the protection order "is engaged or was engaged in a sexual relationship[.]" Ind. Code § 34-6-2-44.8(a)(3). The parties do not dispute that this term includes K.K. here.

[2] The ICPOA, thus, protects victims, not only of criminal stalking, pursuant to Indiana Code Section 35-45-10-5, but any stalking that meets the requirements of the ICPOA.

[15] "Stalk" 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 terrorized, frightened, intimidated, or threatened." Ind. Code § 35-45-10-1. "Harassment" means "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.

[16] Subsection 9(h) of the ICPOA provides, in relevant part:

> A finding that domestic or family violence or harassment 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 or harassment 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. . . .

Ind. Code § 34-26-5-9(h) (emphasis added).

[17] Discussing this credible threat requirement, our Supreme Court has explained that "the respondent must pose a threat to a protected person's safety when the petitioner seeks relief." *S.H.*, 139 N.E.3d at 219. In other words, the threat must be a "present threat." *Id.* at 220. And this threat must be "viewed objectively"—it must be "plausible or believable." *Id.*

> Thus, the petitioner must prove, by a preponderance of the evidence, that there are reasonable grounds to believe that the respondent presently intends to harm the petitioner or the petitioner's family. By focusing on the parties' present situation, the Act not only allows courts to intervene as the parties' circumstances warrant, but also contemplates that the parties' relationship can change over time.

Id.

III. The trial court clearly erred by granting the protection order because the evidence does not support a finding of a present credible threat.

[18] We conclude that the trial court clearly erred by granting the protection order because the evidence does not support the finding of a present credible threat. Here, B.B. and K.K. were former intimate partners who, at one point, shared a close relationship. After B.B. ended the relationship, K.K. continued to contact B.B. despite B.B.'s requests not to do so. And thereafter, although K.K. did not directly communicate with B.B., K.K. continued to place herself in B.B.'s presence at softball games and university events. We do not doubt that this conduct made B.B. feel, at best, uncomfortable and at worst, harassed. Plainly, K.K. showed little respect for B.B.'s boundaries.

[19] But not all harassment justifies a protection order; only harassment that constitutes a present credible threat warrants the "severe limitations on a

restrained person's liberty" that a protection order imposes.[3] *S.H.*, 139 N.E.3d at 221. Those limitations are only warranted when "necessary to bring about a cessation of the violence or the threat of violence." Ind. Code § 34-26-5-9(h). The "safety" of the petitioner must be at risk. *S.H.*, 139. N.E.3d at 221.

[20] We find instructive *L.R.*, 223 N.E.3d 675. In that case, L.R. and M.H. were in middle school and "began an intense dating relationship" that included "sexual foreplay[.]" *Id*. at 677. L.R. ended the relationship, and M.H. later messaged L.R. to indicate that M.H. did not want L.R. to contact M.H. anymore. The two went to the same school and crossed paths several times after M.H. requested that L.R. not contact M.H. On one occasion, L.R. asked M.H. if they "could just move on from what . . . happened," but M.H. said no. *Id*. at 678. Uncomfortable with the continuing contact, M.H. discussed the situation

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[3] When granting a protection order, the trial court has several tools at its disposal to assure the safety of the petitioner, including prohibiting the respondent "from harassing, annoying, telephoning, contacting, or directly or indirectly communicating with a petitioner"; ordering the respondent "to stay away from the residence, school, or place of employment of a petitioner or a specified place frequented by a petitioner and each designated family or household member"; prohibiting the "respondent from using or possessing a firearm, ammunition, or a deadly weapon specified by the court"; and directing "the respondent to surrender to a specified law enforcement agency the firearm, ammunition, or deadly weapon for the duration of the order for protection unless another date is ordered by the court." *See* Ind. Code § 34-26-5-9(c); (d).

Moreover,

> under state law, violating a protective order is punishable by confinement in jail, prison, or a fine, I.C. § 34-26-5-3(c), and subjects the offender to criminal prosecution for criminal stalking and invasion of privacy. *Id.* §§ 35-45-10-5 (criminal stalking), 35-46-1-15.1 (invasion of privacy). And, under federal law, once a protective order has been entered against the respondent, he may commit a crime if he buys, receives, or possesses a firearm. *Id.* § 34-26-5-3(c) (citing 18 U.S.C. §§ 922(g), 2261, 2262).

S.H., 139 N.E.3d at 219.

with a parent, who filed for a protection order. The trial court granted the order.

[21] On appeal, we reversed the trial court's ruling. We noted that the record contained no evidence that "L.R. ever threatened M.H. or M.H.'s family verbally" and that "not all emotional distress is equivalent to the sort of terror and fear of violence that justifies an injunction against another person's behavior." *Id*. at 682. Ultimately, M.H.'s "desire to avoid a former romantic partner" did not warrant a protection order. *Id*. at 683.

[22] Here, as in *L.R.*, the record contains no evidence that K.K. physically harmed or threatened to harm B.B. At most, K.K. threatened self-harm years prior during their relationship. Moreover, B.B. has since graduated from the university where her encounters with K.K. occurred. We recognize that, in "close cases," we should defer to the trial court's judgment. *S.D.*, 211 N.E.3d at 498. But in this case, no record evidence suggests that K.K. presented a present credible threat to B.B.'s safety, as the ICPOA requires. We, therefore, must reverse the trial court's grant of the protection order.

Conclusion

[23] We sympathize with B.B. regarding the emotional distress that she has experienced. The ICPOA, however, does not provide relief for emotional distress when no threat of violence or actual violence has ever occurred. Because the record evidence does not support a finding of a present credible

threat, the trial court clearly erred by granting the protection order.

Accordingly, we reverse.

[24] Reversed.

Altice, C.J., and Brown, J., concur.

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