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NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2019-CA-001238-ME

CHRISTINA HOLT TAYLOR — APPELLANT

v.

APPEAL FROM ALLEN CIRCUIT COURT
HONORABLE MICHAEL L. MCKOWN, JUDGE
ACTION NO. 19-D-00066-001

LEIGH-ANN FITZPATRICK — APPELLEE

OPINION
AFFIRMING

** ** ** ** **

BEFORE: CLAYTON, CHIEF JUDGE; K. THOMPSON AND L. THOMPSON, JUDGES.

THOMPSON, L., JUDGE: Christina Holt Taylor ("Appellant"), *pro se*, appeals from an interpersonal protective order ("IPO") rendered by the Allen Family Court. The IPO barred her from having any contact with Leigh-Ann Fitzpatrick ("Appellee") and her two minor grandchildren. Appellant argues that the facts do

not support the issuance of the IPO. For the reasons addressed below, we find no error and AFFIRM the order on appeal.

FACTS AND PROCEDURAL HISTORY

On July 26, 2019, Appellee filed a petition/motion for order of protection[1] with the Allen Family Court. Appellee alleged that on July 23, 2019, Appellant and her friends occupied a parked vehicle at the entrance to Appellee's subdivision, with the vehicle's headlights on bright and pointed at Appellee's house. According to Appellee, the incident followed a series of threats made against Appellee by Appellant and Appellant's father, who Appellee characterized as a convicted felon. Appellee alleged that Appellant and her father had threatened to kill Appellee; that Appellant sent a package containing obscene material to Appellee; and that Appellant had contacted several individuals in an attempt to get Appellee fired from her job. Appellee claimed in the petition that Appellant had received poor mental evaluations, had been found guilty of mental and physical abuse, and had threatened another person named Tiffany Miller. Appellee alleged that she felt threatened and unsafe, and that attempts by Child Protective Services personnel, Kentucky State Police Trooper Jason Atkinson, and the Barren County Attorney to curtail Appellant's behavior were unsuccessful. Appellee maintained that Appellant had stalked her, and had harassed her by parking in front of her

[1] Administrative Office of the Courts form 275.1.

house and blowing her car horn, and by "flipping her off" with Appellant's middle finger. The petition alleged that Appellant had engaged in stalking and sought to restrain Appellant from making further contact with Appellee.

On July 27, 2019, the Allen Family Court[2] entered a temporary order of protection with a duration of six months. The order barred Appellant from making contact with Appellee and her two minor grandchildren.[3] Appellant was served with a protective order summons on the same day.

On August 6, 2019, the Allen Family Court conducted a hearing on the petition and heard proof. Both parties testified, and as neither were represented by counsel, each was allowed to question the other. On August 8, 2019, the family court rendered the IPO which forms the basis of the instant appeal. The order barred Appellant from making further threats against Appellee and her grandchildren. The court also ordered that she remain at least 400 feet away from Appellee at all times, excluding court appearances. Concurrent with the issuance of the IPO, the court rendered brief, hand-written findings of fact. The court found

[2] On July 30, 2019, Judge Sidnor Broderson recused himself based on the fact that he had a professional working relationship with Appellee. This resulted in the assignment of Judge Michael McKown.

[3] The record does not expressly state that the two minor children are Appellee's grandchildren. Appellee's handwritten statement in support of the petition alleges that Appellant's father parked in front of Appellee's house in 2018 and took pictures of Appellee and her grandchildren, which harassed and frightened Appellee. We infer from this that the children addressed in the IPO are Appellee's grandchildren.

that Appellant parked in front of Appellee's house; "flipped Petitioner off on several occasions," including on school property; drove by Appellee's house and blew the car horn; and threatened to kill Appellee. The court found that Appellant had stalked Appellee, and this appeal followed.

ARGUMENT AND ANALYSIS

Appellant, *pro se*, now argues that the Allen Family Court erred in entering the IPO. She argues that she has been subjected to impermissible double jeopardy, because Appellee made a criminal complaint on similar allegations in 2017 that was dismissed by the Allen District Court. As to the corpus of Appellee's claims, Appellant argues that Appellee's narrative is simply false. Appellant contends that Appellee's claims could not have occurred as alleged, and that she never honked her car horn at Appellee. She maintains that Appellee waited three days between the alleged stalking and the filing of the petition, the delay being something that someone in fear of her safety would not do. Also, Appellant argues that her ex-husband is likely the author of Appellee's petition, that he has improperly acted as Appellee's *de facto* attorney, and that he can be seen on the hearing video giving advice to Appellee. In sum, Appellant maintains that Appellee's allegations are not true, that they were asserted merely to harass Appellant, and that the family court erred in rendering the IPO. Appellant also argues that the IPO petition violated her right to be free of double jeopardy, as a

prior criminal complaint by Appellee against Appellant was previously dismissed. Appellee did not file a responsive brief.

In *Halloway v. Simmons*, 532 S.W.3d 158, 161-62 (Ky. App. 2017), a panel of this Court stated:

> IPO statutes are relatively new and were enacted by the legislature in January 2016. An IPO allows a victim of dating violence and abuse, as well as victims of stalking or sexual assault (regardless of the presence of a past or current dating relationship), or an adult on behalf of a minor victim, to petition for protection against their perpetrator. KRS[4] 456.030(1). The IPO statutes are codified in KRS 456. If the court "finds by a preponderance of the evidence that dating violence and abuse, sexual assault, or stalking has occurred and may again occur, the court may issue an interpersonal protective order." KRS 456.060(1). Under KRS 456.010(7), " '[s]talking' refers to conduct prohibited as stalking under KRS 508.140 or 508.150." Stalking in the second degree, KRS 508.150(1), requires that an individual intentionally,
>
> > (a) Stalks another person; and
> >
> > (b) Makes an explicit or implicit threat with the intent to place that person in reasonable fear of:
> >
> > > 1. Sexual contact as defined in KRS 510.010;
> > >
> > > 2. Physical injury; or
> > >
> > > 3. Death

[4] Kentucky Revised Statutes.

There, stalking is defined in KRS 508.130 as meaning,

> (1) (a) To engage in an intentional course of conduct:
>
> 1. Directed at a specific person or persons;
>
> 2. Which seriously alarms, annoys, intimidates, or harasses the person or persons; and
>
> 3. Which serves no legitimate purpose.
>
> (b) The course of conduct shall be that which would cause a reasonable person to suffer substantial mental distress.

Where "course of conduct" means two or more acts, to show a pattern of conduct. KRS 508.130(2).

To summarize, *for an individual to be granted an IPO for stalking, he or she must at a minimum prove by a preponderance of the evidence that, an individual intentionally engaged in two or more acts directed at the victim that seriously alarmed, annoyed, intimidated, or harassed the victim, that served no legitimate purpose, and would have caused a reasonable person to suffer substantial mental distress, and that these acts may occur again.* KRS 508.130 and KRS 456.060. Additionally, the individual must prove that there was an implicit or explicit threat by the perpetrator that put the victim in reasonable fear of sexual contact, physical injury, or death. KRS 508.150.

(Emphasis added.)

The question for our consideration is whether Appellee demonstrated by a preponderance of the evidence that Appellant intentionally engaged in two or more acts directed at the Appellee that seriously alarmed, annoyed, intimidated, or harassed her, that served no legitimate purpose, and would have caused a reasonable person to suffer substantial mental distress, and that these acts may occur again. KRS 508.130 and KRS 456.060. Preponderance of the evidence is defined as "[t]he greater weight of the evidence . . . sufficient to incline a fair and impartial mind to one side of the issue rather than the other." *Preponderance of the Evidence,* BLACK'S LAW DICTIONARY (11th Ed. 2019). The preponderance is found with the party demonstrating the stronger evidence, "however slight the edge may be." *Id.* The trier of fact has the authority to believe the evidence presented by one litigant over that presented by the other; may believe any witness in whole or in part; and may take into consideration all the circumstances of the case, including the credibility of witnesses. *Bissell v. Baumgardner*, 236 S.W.3d 24, 29-30 (Ky. App. 2007) (citation omitted).

The standard of review for factual determinations is whether the family court's finding was clearly erroneous. Kentucky Rules of Civil Procedure ("CR") 52.01; *Reichle v. Reichle*, 719 S.W.2d 442, 444 (Ky. 1986). Findings are not clearly erroneous if they are supported by substantial evidence. *Moore v. Asente*, 110 S.W.3d 336, 354 (Ky. 2003). "[I]n reviewing the decision of a trial

court the test is not whether we would have decided it differently, but whether the findings of the trial judge were clearly erroneous or that he abused his discretion." *Cherry v. Cherry*, 634 S.W.2d 423, 425 (Ky. 1982) (citation omitted). Abuse of discretion occurs when a court's decision is unreasonable, unfair, arbitrary, or capricious. *Kuprion v. Fitzgerald*, 888 S.W.2d 679, 684 (Ky. 1994) (citations omitted).

Appellee testified under oath regarding her allegations, which were memorialized on a video recording contained in the record. She asserted a litany of claims regarding Appellant's conduct, which included allegations of threats, harassment and intimidation, as well as a threat to kill Appellee made during a phone call. Appellant denied these allegations. Based on the testimony of both parties, we conclude that the findings of the Allen Family Court were not clearly erroneous, as they were supported by Appellee's testimony which the family court found credible. Appellee offered testimonial evidence that Appellant intentionally engaged in two or more acts directed at the Appellee that seriously alarmed, annoyed, intimidated, or harassed her, that served no legitimate purpose, that would have caused a reasonable person to suffer substantial mental distress, and that these acts may occur again. We draw no conclusions as to the veracity of these claims. Rather, we find that: 1) the family court is vested with the authority to determine the credibility of witnesses; 2) the court found the testimony of

Appellee credible; and 3) Appellee's testimony constitutes substantial evidence sufficient to support the IPO. We find no error.

Additionally, we are not persuaded that Appellant was improperly subjected to double jeopardy. The double jeopardy clauses of the Fifth Amendment to the United States Constitution and Section 13 of the Kentucky Constitution each guarantee that no person shall, "for the same offense," be "twice put in jeopardy of life or limb[.]" The federal provision applies to the states through the Fourteenth Amendment. *Benton v. Maryland*, 395 U.S. 784, 794, 89 S.Ct. 2056, 2062, 23 L.Ed.2d 707 (1969). These safeguards prohibit a second prosecution for the same offense after acquittal or conviction, and prohibit multiple punishments for the same offense. *See generally*, *Jordan v. Commonwealth*, 703 S.W.2d 870, 872 (Ky. 1985) (citation omitted). As the matter before us is not a criminal proceeding resulting in acquittal, conviction or punishment, it follows that Appellant has not been subjected to double jeopardy.

CONCLUSION

The Allen Family Court is vested with the authority to judge the weight and credibility of the evidence, and it found Appellee's testimony credible. That testimony constituted a preponderance of the evidence sufficient to sustain Appellee's petition. We find no error, and AFFIRM the interpersonal protective order on appeal.

ALL CONCUR.

BRIEF FOR APPELLANT:

Christina Holt Taylor, *pro se*
Scottsville, Kentucky

NO BRIEF FILED FOR APPELLEE