RENDERED: MAY 29, 2020; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2020-CA-000011-ME

DONNA RENEE DURHAM — APPELLANT

v.

APPEAL FROM PENDLETON CIRCUIT COURT
HONORABLE HEATHER FRYMAN, JUDGE
ACTION NO. 19-D-00064-001

SHANNON COBBY DURHAM — APPELLEE

AND
NO. 2020-CA-000013-ME

STEVEN LYNN DURHAM — APPELLANT

v.

APPEAL FROM PENDLETON CIRCUIT COURT
HONORABLE HEATHER FRYMAN, JUDGE
ACTION NO. 19-D-00065-001

SHANNON COBBY DURHAM — APPELLEE

OPINION
AFFIRMING

** ** ** ** **

BEFORE: COMBS, KRAMER, AND L. THOMPSON, JUDGES.

THOMPSON, L., JUDGE: Donna Renee Durham ("Ms. Durham") and Steven Lynn Couch ("Mr. Couch")[1] appeal from two domestic violence orders ("DVOs") rendered by the Pendleton Circuit Court. The court restrained Mr. Couch and Ms. Durham from any contact or communication with their daughter Shannon Cobby Durham ("Appellee"), Appellee's husband, Dallas Little, and their three minor children. In this consolidated appeal, Mr. Couch and Ms. Durham argue that the facts do not support the issuance of the DVOs, and that the circuit court erred in failing to so rule. For the reasons addressed below, we find no error and affirm the DVOs on appeal.

FACTS AND PROCEDURAL HISTORY

On November 21, 2019, Appellee filed two petitions for orders of protection[2] in Pendleton Circuit Court, Family Division. Appellee alleged that on

[1] Appellant's correct name appears to be Steven Lynn Couch rather than Steven Lynn Durham. The petition for a protective order was filed against Steven Lynn Couch; the emergency protective order and domestic violence order were issued against Mr. Couch; and appellate counsel's written argument refers to Steven Lynn Couch. In the notice of appeal, found at p. 32 of the circuit court record, appellate counsel mistakenly refers to Steven Lynn Couch as Steven Lynn Durham, and this transposition made its way into the appellate record.

[2] Administrative Office of the Courts form 275.1.

October 26, 2019, her parents[3] drove from Kentucky to a bar in Cincinnati, Ohio, after learning that Appellee and her husband were there to attend a party. According to Appellee, Mr. Couch entered the bar with the intent to harm Appellee and Mr. Little, screamed at them, told them to exit the bar so he could "whoop" them, and had to be removed by security. Appellee alleged that Mr. Couch had a long history of harassing, threatening, and taunting Appellee and her husband both in person and on social media. She asserted that Mr. Couch was violent, had previously held a shotgun to Ms. Durham's head, and had threatened Appellee's husband with a knife. Appellee also alleged that Mr. Couch is a felon with a history of mental illness, as well as drug and alcohol abuse. Appellee claimed that Ms. Durham aided Mr. Couch in his threats of violence by driving him to the bar, that she instigated and furthered his threats by lying to Mr. Couch about things Appellee said to Ms. Durham, that she threatened to seek custody of Appellee's children, and that she facilitated Mr. Couch's harassment of Appellee on social media. Appellee maintained that Mr. Couch and Ms. Durham posed a threat to the safety of herself and her husband if the stalking and harassment were allowed to continue.

[3] Appellants' counsel refers to Mr. Couch and Ms. Durham as Appellee's parents. The record does not reveal whether Appellants are married.

Based on the claims set forth in the petitions, the Pendleton Circuit Court rendered emergency protective orders ("EPOs") with immediate effect. A hearing on the petitions was conducted on December 2, 2019, where the parties gave testimony. After the hearing, the circuit court rendered two DVOs restraining Appellants from contact with Appellee, Mr. Little, and their children until December 2, 2021. In support of the DVOs, the circuit court found that Appellants followed Appellee and Mr. Little to the Cincinnati, Ohio, bar, that Mr. Couch threatened to physically harm them, and that he had to be removed by a security guard. The court found that the parties had a violent history, with Mr. Little having previously called the police to report Mr. Couch's behavior. The court also found that Mr. Couch was aggressive and upset at the December 2, 2019 hearing, that he challenged Mr. Little to "be a man" at the hearing, and that Appellee had a legitimate fear of Mr. Couch. As to Ms. Durham, the circuit court found that she admitted driving Mr. Couch to the bar for the purpose of having a confrontation. This appeal followed.

ARGUMENTS AND ANALYSIS

Mr. Couch and Ms. Durham, through counsel, argue that the Pendleton Circuit Court committed reversible error in rendering the DVOs. Mr. Couch contends that his actions at the Cincinnati, Ohio, bar do not rise to the level of domestic violence as set out in Kentucky Revised Statutes ("KRS") 403.720(1),

and that the DVO barring him from contact with Appellee and her family was not warranted. Mr. Couch claims that it is not plausible that he threatened Appellee or Mr. Little, as the purpose of his contact with them was only to bring about reunification with his grandchildren. While acknowledging that a physical confrontation could have occurred if the parties had stepped outside the bar, Mr. Couch asserts that no violence actually occurred. Accordingly, Mr. Couch argues that the facts do not support a finding of domestic violence and that the issuance of the DVO was not warranted.

Ms. Durham notes that she had no physical, verbal, electronic, or other contact with Appellee or Mr. Little at the Cincinnati, Ohio, bar. This, she maintains, conclusively demonstrates that she could not have engaged in any form of domestic violence justifying a DVO. Ms. Durham also argues that Appellee misidentified the vehicle Ms. Durham was driving, did not file a police report, and did not seek the DVOs until several weeks had elapsed. The substance of her argument is that a finding of domestic violence requires at least a modicum of contact with the purported victim, that no such contact occurred at the bar, and that as such, the record did not support the issuance of the DVO. Appellee has not filed a responsive pleading.

A court may issue a DVO if, after a hearing, it finds by a preponderance of the evidence that domestic violence and abuse has occurred and may occur again. KRS 403.740(1). "Domestic violence and abuse" is defined as,

> physical injury, serious physical injury, stalking, sexual abuse, strangulation, assault, or the infliction of fear of imminent physical injury, serious physical injury, sexual abuse, strangulation, or assault between family members[.]

KRS 403.720(1).

> The preponderance of the evidence standard is satisfied when sufficient evidence establishes the alleged victim was more likely than not to have been a victim of domestic violence. . . . The standard of review for factual determinations is whether the family court's finding of domestic violence was clearly erroneous. Findings are not clearly erroneous if they are supported by substantial evidence. In 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. Abuse of discretion occurs when a court's decision is unreasonable, unfair, arbitrary or capricious.
>
> While domestic violence statutes should be construed liberally in favor of protecting victims from domestic violence and preventing future acts of domestic violence, the construction cannot be unreasonable. Furthermore, we give much deference to a decision by the family court, but we cannot countenance actions that are arbitrary, capricious or unreasonable.

Caudill v. Caudill, 318 S.W.3d 112, 114-15 (Ky. App. 2010) (internal quotation marks, brackets, and citations omitted).

The salient question for our consideration is whether the Pendleton Circuit Court properly found by a preponderance of the evidence that domestic violence and abuse occurred and may occur again. In considering this question, we give much deference to the decision of the circuit court so long as its findings are supported by substantial evidence and its decision did not constitute an abuse of discretion. *Id.*

As to Mr. Couch, Appellee testified that he traveled to an adjoining state and located Appellee and her husband, after which he confronted them inside a bar. She further testified that Mr. Couch wanted Appellee and her husband to exit the bar so Mr. Couch could beat them in front of their friends. This incident followed what Appellee claimed was a series of threats and intimidation going back to 2018, which included among other things Mr. Couch damaging Appellee's vehicle and stating that Appellee's children should not be alive because they had ignorant parents. Mr. Couch acknowledged that if Appellee and her husband had exited the Cincinnati, Ohio, bar, physical violence might have ensued.

After the hearing, the Pendleton Circuit Court made specific findings that Mr. Couch threatened to beat Appellee and her husband, that there was a strained relationship and a history of violence, and that Mr. Couch was aggressive and upset in open court. The court found that Appellee had a legitimate fear of Mr. Couch.

We conclude from the record and the law that Appellee was "more likely than not" to have been a victim of domestic violence and abuse, *id*. at 114, and that she was stalked by Mr. Couch and experienced a fear of imminent physical injury or assault as set out in KRS 403.720(1). The findings of the Pendleton Circuit Court are supported by the record, and its issuance of the DVO comports with the law and is not clearly erroneous.

We next turn our attention to the DVO issued against Ms. Durham. While she correctly states that she had no direct contact with Appellee at the Cincinnati, Ohio, bar, the Kentucky General Assembly enacted an expansive definition of domestic violence and abuse for purposes of the DVO statute to include both "stalking" and "the infliction of fear of imminent physical injury[.]" KRS 403.720(1). Neither of these acts requires direct physical, verbal, or electronic contact.

Stalking is defined as an intentional course of conduct directed at a specific person which seriously alarms, annoys, intimidates, or harasses the person with no legitimate purpose. KRS 508.130(1)(a). Ms. Durham acknowledged that she transported Mr. Couch to an adjoining state for the purpose of Mr. Couch confronting Appellee and her husband at a bar – a confrontation which Mr. Couch acknowledged could have become physical if Appellee and her husband exited the bar. Ms. Durham's act of transporting Mr. Couch to a bar in an adjoining state,

taken alone, may not arise to the level of domestic violence. However, this act must be considered in the context of Appellee's claim that the Appellants were harassing her on social media, as well as Ms. Durham's knowledge that Mr. Couch had engaged in an extended history of threatening and abusive behavior toward Appellee and her husband.

The Pendleton Circuit Court expressly found Appellee was afraid of her parents, and given the totality of the record we find no error in the circuit court's conclusion that Ms. Durham engaged in domestic violence and abuse as broadly defined by the General Assembly. Further, we "give much deference to a decision by the family court," and must liberally construe KRS Chapter 403 in favor of protecting victims. *Caudill*, 318 S.W.3d at 115.

CONCLUSION

The Pendleton Circuit Court's finding of domestic violence and abuse is supported by the record and the law. The circuit court need only conclude that it was more likely than not that such abuse occurred, and that it may occur again. The record amply supports this determination, and we find no error. For these reasons, we affirm the DVOs rendered by the Pendleton Circuit Court.

ALL CONCUR.

BRIEFS FOR APPELLANTS:

Pete W. Whaley
Williamstown, Kentucky

NO BRIEF FOR APPELLEE