

Commonwealth of Kentucky
Court of Appeals

NO. 2018-CA-001640-ME

WILLIAM GARRETT

APPELLANT

v. APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE DEBORAH DEWEESE, JUDGE
ACTION NO. 18-D-500760-001

ANGELA GARRETT

APPELLEE

OPINION
AFFIRMING

** ** * ** * ** *

BEFORE: ACREE, JONES, AND K. THOMPSON, JUDGES.

JONES, JUDGE: Appellant, William Garrett, appeals from a Domestic Violence Order (“DVO”) entered by the Jefferson Circuit Court-Family Division, restraining him from unauthorized contact with Appellee, Angela Garrett. William requests us to reverse the trial court’s entry of the DVO against him on the basis that the events in this case, as testified to by the parties, do not establish that William

committed an act of domestic violence as required by KRS¹ 403.740.

Alternatively, William asks us to vacate and remand for a new DVO hearing because the trial court's examination of Angela was not conducted in accordance with KRE² 601(b) and deprived him of his due process rights.

We have reviewed the record in conjunction with all applicable legal authority. The trial court's decision is supported by substantial evidence, and William was provided with an opportunity to cross-examine Angela at the DVO hearing. His constitutional rights were not violated. Accordingly, for the reasons more fully explained below, we AFFIRM.

I. Background

The events giving rise to this appeal began on March 13, 2018. At that time, William and Angela had been married for approximately five years and had two young children together.³ Although their accounts vary dramatically, they agree they were in the marital residence with the children on March 13 when an argument erupted between them concerning their impending divorce.

According to Angela's petition, which was read into the record at the DVO hearing and adopted as her testimony, William approached her with a

¹ Kentucky Revised Statutes.

² Kentucky Rules of Evidence.

³ By the time of the DVO hearing, the parties were in the process of legally dissolving their marriage. The children are not part of the DVO.

notepad on which he had written down all their marital assets. William wanted to discuss the division of those assets with her. Angela had lost her voice; she told William she did not feel like talking about their assets at that time. William then told Angela to put down her cell phone and talk to him. When she did not comply, he placed the notepad over her phone. When Angela again refused to discuss the division of assets with William, he stuck the notepad in her face. He then grabbed her by the wrist and took her cell phone. Angela had previously injured her wrist, and informed William that he was hurting her. William let go of Angela's wrist, but grabbed Angela's laptop stating that he had paid for it. When Angela stood up, William grabbed her by the waist, constricting her. Again, Angela told William he was hurting her. This time, however, William did not immediately let go of Angela. He proceeded to drag Angela into the master bedroom by her waist and told her that they were going to talk. When Angela attempted to pull away, William suddenly let go of her, causing her to fall into the bathroom door. Angela states that she suffered bruising to her buttocks due to the fall and sought treatment a few days later with a chiropractor.

Once in the bedroom, Angela claims that William jumped on the bed with her phone and laptop, refusing to return the items. Angela attempted to run out of the house for help. The door required a key to unlock it. As Angela attempted to unlock the door, William grabbed the key from her. Angela states she

then began pounding on the door for help, before attempting to run to a different door to escape. When Angela got to the second door, William locked the door and grabbed her hands preventing her from leaving. Finally, Angela was able to get her phone back and called a friend's wife who told her to call 911, which she did. William fled the residence before the police arrived.

William testified to a different version of events. William agreed that on March 13, 2018, he approached Angela in the marital residence to discuss the division of their assets. According to William, when Angela told him she did not feel like talking, he simply left the list with Angela and left the room. William returned a short time later to find that Angela had ripped up his list and thrown it in the trash. As a result, William says he picked up Angela's laptop, so he could retype the list. At that time, William states that Angela jumped on his back. William did not want their children to witness the argument, so he carried Angela to the master bedroom, as she clung onto his back. Once in the room, William claims that Angela fell off his back and onto the floor. William states that Angela's phone was in his pocket because Angela had left it sitting on the couch. William agrees that Angela ran to the door; however, he claims that he was able to dissuade her from leaving because it would cause a scene in front of the neighbors. William testified that he gave back Angela's phone and left because he had to go to work.

Three days after the parties' altercation, Angela sought and obtained an Emergency Protective Order ("EPO") barring William from being in contact with her. At the DVO hearing, Angela testified that William's behavior toward her changed after she obtained the EPO. She testified that William had the utilities shut off to the marital residence and had her phone service disconnected. She testified that she went to the Verizon store to check on her phone service and upon exiting the store saw William sitting in the parking lot watching her; he was laughing. She said he followed her in his car when she left the store. Angela also testified that even though the EPO barred William from entering the marital home, he came into the house several times when she was not at home. She explained that he would leave something behind to let her know he had been there. This behavior caused Angela to install a security camera in the home. William was captured on video in the home in violation of the EPO, which led to him being charged with violating an EPO; he pleaded guilty to the charge.

William denied being in the Verizon store's parking lot, however, he admitted that he shut off the utilities and the phone because he was tight on money due to having to leave the marital residence. William attempted to justify his violation of the EPO by stating that he knew no one was home because he had checked with the neighbors beforehand and that he was simply going in to get some personal, sentimental items.

Following the parties' testimony, the trial court granted Angela a DVO. The trial court was persuaded by Angela's testimony that William had engaged in an act of domestic violence against her during the parties' altercation on March 13 and that his subsequent behavior—following Angela, having third parties' deliver messages to her, and violating the EPO barring him from entering the marital home—indicated that William was likely to commit more acts of domestic violence against Angela if not restrained.

This appeal by William followed.

II. Standard of Review

Appellate review of a DVO is “not whether we would have decided it differently, but whether the court’s findings were clearly erroneous or that it abused its discretion.” *Gomez v. Gomez*, 254 S.W.3d 838, 842 (Ky. App. 2008). “Findings are not clearly erroneous if they are supported by substantial evidence.” *Caudill v. Caudill*, 318 S.W.3d 112, 114-15 (Ky. App. 2010) (citing *Moore v. Asente*, 110 S.W.3d 336, 354 (Ky. 2003)). “Abuse of discretion occurs when a court’s decision is unreasonable, unfair, arbitrary or capricious.” *Id.* at 115 (citing *Kuprion v. Fitzgerald*, 888 S.W.2d 679, 684 (Ky. 1994)).

III. Analysis

Following a hearing, “if a court finds by a preponderance of the evidence that domestic violence and abuse has occurred and may again occur, the court may issue a domestic violence order.” KRS 403.740(1). “Domestic violence and abuse” is defined by statute 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 or members of an unmarried couple[.]” KRS 403.720(1).

William maintains that the trial court erred in granting Angela a DVO because the facts testified to by the parties do not establish that William engaged in an act of domestic violence against Angela. William maintains that, at most, Angela’s testimony establishes that he engaged in only a single incident of unwanted touching during their argument of March 13. William is correct that we have held that a single incident of unwanted touching without more is insufficient to establish domestic violence. *See Telek v. Daugherty*, 376 S.W.3d 623, 628 (Ky. App. 2012). In this case, however, there was more than a single unwanted touching without corresponding injury.

The trial court accepted Angela’s testimony. This testimony is substantial evidence that supports the trial court’s determination that William engaged in an act of domestic violence toward Angela. Angela testified that

William engaged in several “unwanted touchings” on March 13, including grabbing her wrists, grabbing her around the waist, and dragging her against her will to a back bedroom. During the final altercation, William either pushed or released Angela with such force that she fell on her back and buttocks. Angela testified that she was injured. She experienced bruising and sought medical treatment a few days later. Additionally, William’s behavior toward Angela during the altercation was threatening in that he took her cell phone away from her and tried several times to prevent her from escaping from him. This behavior was sufficiently threatening to cause Angela to be in fear of William. In sum, we disagree with William that the trial court’s determination that William engaged in an act of domestic violence against Angela is not supported by sufficient facts of evidence.

In addition to finding that an act of domestic violence occurred in the past, the trial court must also find that the domestic violence and abuse “may again occur.” Again, we believe the facts testified to by Angela support this conclusion. Angela testified that William followed her, had her cell phone disconnected, had others deliver messages to her, and generally engaged in harassing and threatening conduct towards Angela. Most concerning, Angela testified that William entered the marital home several times in violation of the EPO, one of which was caught on video. While William testified that he did so knowing Angela would not be

home and only to retrieve sentimental items, the trial court did not accept this explanation, and noted that if it was true, William's act of violating the EPO showed he was willing to put his own needs and wants above the law. Angela testified William's conduct towards her caused her to fear that he was going to injure her further. Based on this testimony, we are confident the trial court was correct in finding that domestic violence may occur again. *See Hohman v. Dery*, 371 S.W.3d 780 (Ky. App. 2012).

Finally, William argues that the trial court deprived him of due process when the court asked Angela additional follow-up questions during its oral findings. William claims this questioning was not in accordance with KRE 614(b) and violated his constitutional right to confront the witnesses against him.

KRE 614(b) provides: "Interrogation by court. The court may interrogate witnesses, whether called by itself or by a party." We are unclear how the trial court violated this provision since it clearly vests the trial court with the discretion to ask questions of various witnesses. In any event, William did not preserve this argument because he did not object during the hearing.

To this end, William asserts that we should review the claim for palpable error because his rights under the confrontation clause were violated. We decline this invitation. William was given the opportunity to cross-examine Angela. The trial court's clarifying questions to the witness as part of a bench trial

did not violate William's rights to a fair trial. He had already been given an opportunity for cross examination. His rights were not violated.

IV. Conclusion

For the foregoing reasons we AFFIRM the entry of the DVO by the Jefferson Family Court.

ALL CONCUR.

BRIEFS FOR APPELLANT:

F. Todd Lewis
Louisville, Kentucky

BRIEF FOR APPELLEE:

Beth Robinson-Kinney
Louisville, Kentucky