

Commonwealth of Kentucky

Court of Appeals

NO. 2006-CA-001777-ME

RONALD WAYNE THARP

APPELLANT

v. APPEAL FROM HENDERSON FAMILY COURT
HONORABLE SHEILA NUNLEY-FARRIS, JUDGE
ACTION NO. 06-D-00101

AMANDA LORENE THARP

APPELLEE

OPINION
AFFIRMING

** ** * * * * *

BEFORE: STUMBO, JUDGE; BUCKINGHAM AND HENRY, SENIOR JUDGES.¹

BUCKINGHAM, SENIOR JUDGE: Ronald Wayne Tharp appeals from the entry of a Domestic Violence Order (DVO) against him by the Henderson Family Court based upon a petition filed by his wife, Amanda Tharp. For the reasons stated below, we affirm.

¹ Senior Judges David C. Buckingham and Michael L. Henry sitting as Special Judges by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and KRS 21.580.

On March 27, 2006, Amanda filed a Domestic Violence Petition alleging that Ronald had engaged in acts of domestic violence. Among other things, the petition stated that

I'm in fear of him [Ronald] now because he has threaten[ed] to kill the man that I am seeing. I recorded him saying that. He said that I'm a Aldulter [sic] and him [sic] and I would be killed back in the bible days! He said that every case of steaks that he sells, all the money he makes gets him the money to even hire someone to do it! He said he was going to fight me in Court for the kids, and he would get by with the murder. He said that if I want to save Chris' life (the man I'm seeing) stop talking to him! He said I better stop talking to him so no one will die! All of this happened this afternoon, 7-21-06. He arrived here in Henderson to see the kids 7-20-06 in the evening. My family was there and he spoke how he had changed and he was a Christian now. I felt a little at ease because he seemed sincere. Today 7-21-06 my grandma (I live with) went to take my grandpa to the hospital. So I was left with Ron by myself from about 1 - 6:30 p.m. He had been berating [me] the whole time. He told me I couldn't tell you how many times about how he is not getting over the situation, how he is not letting me go. [H]e said he doesn't [sic] care what it takes he is not losing him [sic] family. He grabbed my arms [and] pushed (he didn't shove hard) me against the wall. As he did that he continued to say he wasn't letting me go and that he was killing Chris! I told him to let me go. . . . He wouldn't let me answer my phone at home. He wouldn't let me talk to my aunt. I did talk to my uncle and he thought it was Chris. He said I'm insane!!! Stay away from my wife. My Uncle was a witness and told the Officer that he said that statement (Officer Green). He also started problems with neighbors. He would not leave. . . . The whole time I was scared he was gonna [sic] kill me, the kids, and himself[.] . . . He was also saying he was gonna [sic] kill himself.

Based upon the petition, on July 24, 2006, the Henderson Family Court entered an Emergency Order of Protection (EPO) on behalf of Amanda and against Ronald. The EPO set a hearing date for August 1, 2006. Following the hearing, the court entered a DVO against Ronald. The DVO is to last until July 31, 2009. This appeal by Ronald followed.²

Ronald contends that the family court erred by entering the DVO against him. He alleges that Amanda brought the petition against him in order to gain leverage in their pending divorce case. He contends that the court's ruling “seems to be hinged solely upon [his] biblical readings.” While Ronald concedes that he made references to biblical passages on the subject of adultery, he contends that he did so “in a counseling manner and not in a threatening manner.” Ronald argues that “No reasonable person would believe that they were being threatened by someone reading Bible verses to them. Certainly quoting or reading the Bible to another person would not cause 'fear of imminent physical injury, serious physical injury, or sexual abuse'”.

Kentucky Revised Statute (KRS) 403.750(1) allows the court to enter a domestic violence order “if it finds from a preponderance of the evidence that an act or acts of domestic violence and abuse have occurred or may again occur[.]” “Domestic violence and abuse” is defined in KRS 403.720(1) as “physical injury, serious physical injury, sexual abuse, assault, or the infliction of fear of imminent physical injury, serious

²Amanda did not file a brief in this appeal.

physical injury, sexual abuse, or assault between family members or members of an unmarried couple[.]”

In cases tried upon the facts without a jury, “[f]indings of fact shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge the credibility of the witnesses.” Kentucky Rule of Civil Procedure (CR) 52.01. “The reviewing court may not substitute findings of fact for those of the trial court where they were not clearly erroneous.” *Reichle v. Reichle*, 719 S.W.2d 442, 444 (Ky. 1986).

The DVO order determined as a finding that “it was established, by a preponderance of the evidence, that an act(s) of domestic violence or abuse has occurred and may again occur.” We are bound to assume that this factual finding is supported by substantial evidence because the record on appeal does not contain the testimony or evidence that formed the basis for the court's alleged erroneous finding. Though Ronald's brief cites us to the tape of the August 1, 2006, hearing, the tape is not contained in the appellate record.

It is an appellant's duty to see that the record is complete on appeal. *Commonwealth, Dept. of Highways v. Richardson*, 424 S.W.2d 601, 603 (Ky. 1968). When the complete record is not before the appellate court, we are bound to assume that the omitted record supports the decision of the trial court. *Id.*; *Commonwealth v. Thompson*, 697 S.W.2d 143, 145 (Ky. 1985); *Burberry v. Bridges*, 427 S.W.2d 583, 585

(Ky. 1968). As noted by the court in the *Burberry case*, "[i]t is also reasonable to place upon appellant the duty to designate and file a record sufficient to enable the court to pass on the alleged errors."

In the absence of any record of the August 1, 2006, hearing or a proper narrative statement or bystanders bill, we must presume that the evidence presented during that hearing supports the family court's order entering a DVO against Ronald. *See Combs v. Risner*, 139 S.W.2d 375, 376 (Ky.App. 1940) ("It is a general rule of appellate practice that the court will conclusively presume that a missing part of the record supports the judgment").

In any event, if Amanda testified consistently with the allegations contained in her Domestic Violence Petition as set forth above, that evidence would be sufficient to support the family court's entry of a DVO.

For the foregoing reasons, the order of the Henderson Family Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

NO BRIEF FOR APPELLEE

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