

Commonwealth of Kentucky
Court of Appeals

NO. 2009-CA-001278-ME

BRADLEY BROWNING

APPELLANT

v. APPEAL FROM FAYETTE FAMILY COURT
HONORABLE LUCINDA MASTERTON, JUDGE
ACTION NO. 09-D-00261

NENA MARIE BROWNING

APPELLEE

OPINION
AFFIRMING

** ** * ** * ** *

BEFORE: CLAYTON AND NICKELL, JUDGES; KNOPF,¹ SENIOR JUDGE.

KNOPF, SENIOR JUDGE: Bradley Browning appeals the June 12, 2009, domestic violence order of the Fayette Family Court, entered on behalf of Nena Marie Browning. Because we hold that the trial court did not abuse its discretion, we affirm.

¹ Senior Judge William L. Knopf sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and Kentucky Revised Statutes (KRS) 21.580.

The parties are currently pursuing a divorce in Fayette County Family Court. On June 8, 2009, while Nena was attempting to remove items from the marital residence, Nena and Bradley got into a disagreement and the police were called. On June 11, 2009, Nena filed a domestic violence petition which alleged that Bradley had threatened her, her brother, and her mother. Nena cited to the June 8, 2009, incident. A temporary order of protection was entered requiring Bradley to remain 1000 feet away from Nena. The order also required Nena to arrange for an escort from the Fayette County Sherriff's Office in order to retrieve any personal belongings from the marital residence. A hearing was held on the domestic violence petition on June 22, 2009. Nena testified that there was a history of domestic violence between the parties; that Bradley had previously threatened her and her family; and that she was afraid of Bradley. Bradley denied all of the allegations. The trial court entered an order of protection which, among other provisions, prohibited Bradley from having any contact with Nena, effective until June 22, 2012. This appeal followed.

Domestic violence and abuse is defined as: “physical injury, serious physical injury, sexual abuse, assault, or the infliction of fear of imminent physical injury, serious physical injury, sexual abuse, or assault between family members or members of an unmarried couple[.]” KRS 403.720(1). Domestic violence orders are appropriate when the trial court has found “from a preponderance of the

evidence that an act or acts of domestic violence and abuse have occurred and may again occur[.]” KRS 403.750(1). “The preponderance of the evidence standard is met when sufficient evidence establishes that the alleged victim was more likely than not to have been a victim of domestic violence.” *Gomez v. Gomez*, 254 S.W.3d 838, 842 (Ky. App. 2008) (citation omitted). When reviewing a trial court’s issuance of a domestic violence order, we look to “whether the court’s findings were clearly erroneous or that it abused its discretion.” *Id.*

On appeal, Bradley argues that the trial court abused its discretion by failing to enter specific findings that the June 8, 2009, incident occurred. Bradley argues that the trial court relied on what he refers to as “generalized statements” to support its entry of a domestic violence order. We disagree. The trial court heard the testimony of both parties, which included statements from Nena that Bradley had physically abused her and that he had threatened to kill her on numerous occasions. It is the right of the trial court to believe one party over another. *Gomez*, 254 S.W.3d at 842. In this case, the trial court chose to believe the testimony of Nena over that of Bradley. Nena’s testimony, if taken as true, is successful at fulfilling the preponderance requirements of KRS 403.750(1). The fact that the trial court failed to enter findings that the June 8, 2009, incident occurred is irrelevant. There is no requirement that *every* alleged incident be proven, only that *an* act has occurred and may occur again. KRS 403.750(1). The findings of the trial court reflect this.

Furthermore, we will not reverse a judgment for failure of the trial court to enter a finding of fact on an essential issue unless that failure has been brought to the trial court's attention by written request. *See* CR² 52.04. Bradley failed to request specific findings from the trial court.

For the foregoing reasons, the June 12, 2009, domestic violence order of the Fayette Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

Kevin Palley
Lexington, Kentucky

BRIEF FOR APPELLEE:

Rachel D. Yavelak
Lexington, Kentucky

² Kentucky Rules of Civil Procedure.