

**Commonwealth of Kentucky**

**Court of Appeals**

NO. 2009-CA-001799-ME

CAROLYN TUFTS

APPELLANT

v. APPEAL FROM FAYETTE FAMILY COURT  
HONORABLE LUCINDA CRONIN MASTERTON, JUDGE  
ACTION NO. 08-D-00536

DAVID CAROL TUFTS

APPELLEE

OPINION  
AFFIRMING

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BEFORE: LAMBERT AND STUMBO, JUDGES; WHITE,<sup>1</sup> SENIOR JUDGE.

LAMBERT, JUDGE: Carolyn Tufts appeals from the Fayette Family Court's entry of an August 31, 2009, domestic violence order against her. She argues that there was insufficient evidence to support the entry of such an order. For the reasons set forth herein, we disagree and thus affirm.

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<sup>1</sup> Senior Judge Edwin White 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.

Carolyn and David Tufts were married in 1978. They are currently dissolving their marriage in Fayette Family Court. On August 26, 2009, David filed a petition with the court alleging the following:

At approximately 5:00 p.m. on Tuesday, August 25, my wife stopped in the street of my place of business – rolled down the passenger side window and shouted, “I am going to kill you.” She repeated this several times until traffic caused her to pull away. My attorney had called me on Monday, August 24th and advised me to be careful as he believed she was “mentally unstable.” She possesses a handgun stolen from me and I do believe she is a threat.

At an August 31, 2009, hearing, David was asked whether everything in his petition was correct, and he affirmed. He also stated that he telephoned the police at 5:13 p.m., right after the incident happened.

Carolyn testified that she did not and could not have made such a threat because she was stuck at her attorney’s office at the time her husband alleged the incident occurred. She offered two witnesses to verify that she was at the office in downtown Lexington until 5:15 p.m., which was approximately five miles away from the husband’s business on Richmond Road. The family court did not hear the witnesses’ testimony, as the parties were willing to stipulate that Carolyn was at the office until that time because she had locked her keys in her vehicle and had to wait for her son to deliver another set of keys. The parties further stipulated that Carolyn drove to Harrodsburg Road to pick up dinner at a sandwich shop and then met her son with the dinner at 5:40 p.m.

The family court stated that this was a very close case. Yet, Carolyn already had a domestic violence order against her husband, and after consideration of the facts presented, the court concluded that a reciprocal order against the wife was warranted. When asked about the time discrepancy, the family court concluded that David's recollection as to the time the incident occurred was inaccurate. Rather, the family court concluded that the incident occurred sometime between 5:15 p.m. and 5:40 p.m.

On appeal to this Court, Carolyn argues that the evidence set forth above is not sufficient to support the entry of a domestic violence order. We disagree.

A trial court is authorized 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 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.'" *Baird v. Baird*, 234 S.W.3d 385, 387 (Ky. App. 2007) (quoting *Commonwealth v. Anderson*, 934 S.W.2d 276, 278 (Ky. 1996)).

As noted by the trial court, this was a close case since David's testimony as to the time the incident allegedly occurred was incompatible with the stipulated testimony of the parties' son. However, in making its credibility determinations, the trial court "may believe any witness in whole or in part." *Anderson*, 934 S.W.2d at 278.

If Carolyn had endeavored to confirm the exact time of the telephone call made by David to the police, this might have been a different case. As it stands, the trial court was within its discretion to believe the bulk of the testimony presented by David over the testimony presented by Carolyn. David's testimony was sufficiently specific as to the nature of the incident and when it occurred. *See Rankin v. Criswell*, 277 S.W.3d 621, 625 (Ky. App. 2008). Accordingly, we disagree that insufficient evidence exists in this case to justify the entry of a domestic violence order against Carolyn. While another court may have reached a contrary conclusion, that is not enough to disregard the Fayette Family Court's weighing of the evidence in this case. *Moore v. Asente*, 110 S.W.3d 336, 354 (Ky. 2003).

Accordingly, the August 31, 2009, domestic violence order entered against Carolyn Tufts by the Fayette Family Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

Lola Philpot Lewis  
Lexington, Kentucky

BRIEF FOR APPELLEE:

Shea Chaney  
Lexington, Kentucky