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NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2009-CA-000126-ME

ANTHONY TODD MEADE — APPELLANT

v.

APPEAL FROM JEFFERSON FAMILY COURT
HONORABLE HUGH SMITH HAYNIE, JUDGE
ACTION NO. 08-D-503806 & 08-D-503806-002

ZELLA DANIELLE CHAMBLISS — APPELLEE

OPINION
REVERSING AND REMANDING

** ** ** ** **

BEFORE: CLAYTON, DIXON, AND THOMPSON, JUDGES.

THOMPSON, JUDGE: Anthony Todd Meade appeals from a domestic violence order (DVO) and an order denying his motion for post-judgment relief pursuant to CR 52.02. We conclude that the family court was required to render specific findings of fact and reverse and remand.

Meade and Zella Danielle Chambliss were involved in a relationship for a year and a half and lived together for a brief time. In June 2008, Chambliss, who had a history of mental illness, suffered a nervous breakdown and attempted to commit suicide in Meade's presence. After she was released from the hospital, the parties' relationship ended. However, Chambliss then rented an apartment in the same building as Meade, and the two continued working together at a nursing and rehabilitation center.

On November 29, 2008, Chambliss requested an emergency protective order (EPO) against Meade for allegedly harassing her because he sent her a "depressing" e-mail. Although the EPO was denied, a summons was issued requiring Meade to attend a subsequent court appearance.

On December 1, 2008, Meade obtained an EPO against Chambliss, alleging she had entered his apartment when he was not home, accessed his e-mail, taken his credit card numbers and that Chambliss attacked him at the time of her suicide attempt. Two days later, Chambliss obtained an EPO against Meade, alleging that a physical altercation occurred after Meade's EPO was served upon her.

Due to Judge Hugh Smith Haynie's absence from the bench, Special Judge Paula Fitzgerald presided at the hearing. Chambliss appeared at the hearing *pro se*, and Meade appeared with counsel.

The court reviewed the November 29, 2008, petition and ordered it dismissed because the allegations did not constitute domestic violence. The court

then considered the allegations in Meade's EPO and Chambliss's EPO obtained in December.

Chambliss did not deny that she had possession of Meade's credit card numbers, had broken into his e-mail account and entered Meade's apartment when he was absent. Chambliss testified that Meade threatened her and pushed her against a wall but no other witness testified to confirm her testimony and there was no physical evidence of injury. Although her mother was unavailable as a witness because of a physical ailment, Chambliss was permitted to testify that her mother would have identified the bruises on Chambliss's back. In addition to the parties, Meade's new girlfriend, who lived in the apartment below Chambliss, testified that Meade was with her at the time of the alleged physical assault upon Chambliss and that no assault occurred.

The family court dismissed Meade's petition against Chambliss and, in its initial verbal ruling, dismissed Chambliss's petition against Meade. However, after Chambliss began crying, the family court later reversed its ruling and stated: "I tell you what Anthony . . . I believe her" and made a finding of domestic violence. The written order entered was a form order on which it is recited that an "act(s) of domestic violence or abuse has occurred and may again occur. . . ."

Meade filed a motion to alter, amend, or vacate the DVO and requested additional findings of fact pursuant to CR 52.02, which were heard by Judge Haynie. Although Judge Haynie expressed concern over the lack of

specificity in the court's finding of domestic violence, he emphasized that he did not hear the evidence. As a result, he relied upon Judge Fitzgerald's judgment that the DVO was warranted and held that no further findings of fact were required. This appeal followed.

Meade contends the court erred by denying his post-judgment motion because he was entitled to additional findings of fact, or alternatively, that the evidence did not support entry of a DVO against him. Because we find merit in Meade's initial contention and remand for specific findings of fact, we do not address the sufficiency of the evidence.

Judge Haynie's initial premise that he was unable to render additional findings because he was not the initial fact-finder was in error. It is clearly permissible for a judge to decide a case and make factual findings by reviewing the trial record and render factual findings based on the recorded hearing. *See Hamlin Const. Co., Inc. v. Wilson,* 688 S.W.2d 341, 343 (Ky.App. 1985). Alternatively, the case could have been transferred to the judge who presided over the DVO hearing.

Not only was Judge Haynie empowered to render findings of fact based on the record, we conclude that following Meade's properly filed CR 52.02 motion he was compelled to make specific findings.

CR 52.02 affords litigants the opportunity to request additional findings. The reason for requiring specific findings of fact is to provide the reviewing court with a basis for understanding the circuit court's "view of the

controversy." *Reichle v. Reichle*, 719 S.W.2d 442, 444 (Ky. 1986). Because a court speaks through its duly entered and signed written orders, absent specific findings of fact, an appellate court cannot afford meaningful review. *Midland Guardian Acceptance Corp. of Cincinnati, Ohio v. Britt,* 439 S.W.2d 313 (Ky. 1968).

In *Reichle*, our Supreme Court emphasized the significance of specific findings of fact in child custody cases: DVO proceedings are no less significant.

> If granted, it may afford the victim protection from physical, emotional, and psychological injury, as well as from sexual abuse or even death. It may further provide the victim an opportunity to move forward in establishing a new life away from an abusive relationship. In many cases, it provides a victim with a court order determining custody, visitation and child support, which he or she might not otherwise be able to obtain. The full impact of EPOs and DVOs are not always immediately seen, but the protection and hope they provide can have lasting effects on the victim and his or her family.
>
> On the other hand, the impact of having an EPO or DVO entered improperly, hastily, or without a valid basis can have a devastating effect on the alleged perpetrator. To have the legal system manipulated in order to "win" the first battle of a divorce, custody, or criminal proceeding, or in order to get "one-up" on the other party is just as offensive as domestic violence itself. From the prospect of an individual improperly accused of such behavior, the fairness, justice, impartiality, and equality promised by our judicial system is destroyed. In addition, there are severe consequences, such as the immediate loss of one's children, home, financial resources, employment, and dignity. Further, one becomes subject to immediate arrest, imprisonment, and incarceration for up to one year for the violation of a court order, no matter what the situation or circumstances might be.

Rankin v. Criswell, 277 S.W.3d 621, 624-625 (Ky.App. 2008) (quoting *Wright v. Wright*, 181 S.W.3d 49, 52 (Ky.App. 2005)). In addition to the potential impact a DVO can have on the parties and child custody, findings of fact enlighten third parties, such as employers, as to the reason for its entry.

We conclude that CR 52.02 is applicable to DVO proceedings and, when a proper CR 52.02 motion requesting specific findings is made, the court is required to render specific findings of fact to support its decision including that domestic violence occurred as defined in KRS 403.720 and that the requirements of KRS 403.750 have been met. There must be: "(a) specific evidence of the nature of the abuse; (b) evidence of the approximate date of the respondent's conduct; and (c) evidence of the circumstances under which the alleged abuse occurred." Further, "after conducting the evidentiary hearing, the court must then decide whether, under the preponderance of the evidence standard, domestic violence has occurred and may occur again." *Rankin,* 277 S.W.3d at 626.

Based on the foregoing, the DVO entered by the Jefferson Family Court is reversed and the case remanded for the entry of specific findings of fact.

CLAYTON, JUDGE, CONCURS.

DIXON, JUDGE, DISSENTS AND FILES SEPARATE OPINION.

DIXON, JUDGE, DISSENTING: Because I believe the majority in this case drastically changes a procedural rule, I must respectfully dissent. CR 52.02 provides an avenue for a party to *request* a trial court for additional findings to support its judgment. The rule itself, as well as case law, makes clear the court

may make additional findings and *may* amend its judgment. Nothing in this rule mandates that a court *must* make additional findings upon a motion made by a party under this rule. *See McKinney v. McKinney*, 257 S.W.3d 130, 134 (Ky.App. 2008). Certainly, many times a trial court's failure to make further findings results in remand, as the majority mandates here. The majority would however, now *require* all trial courts to make additional findings under CR 52.02. The majority writes, "…we conclude that following Meade's properly filed CR 52.02 motion [the trial judge] was *compelled* to make specific findings." (emphasis added). This vast pronouncement is rendered without any citation to authority whatsoever and flies utterly in the face of the plain language of the rule itself. As an intermediate court, our decisions necessitate findings consistent with established procedural rules. The majority however, has chosen to write into CR 52.02 a requirement not intrinsic to the Rule. I believe this is error.

Moreover, I do not believe that remand is necessary under CR 52.02, as it has historically been applied. The majority notes the impact domestic violence orders have on victims and alleged perpetrators. It quotes precedent which observes that "… the legal system [can be] manipulated in order to 'win' the first battle of a divorce, custody, or criminal proceeding," thus making the domestic violation petition suspect. *See Rankin supra,* at 624-625. However, there is no evidence in the case before us that any of these factors are present here. Apparently there are no children born to this couple, they are not married, and

there is no evidence that any criminal charges have been filed against either the petitioner or respondent.

Our Supreme Court has determined that a trial court must find that a DVO is warranted by a preponderance of evidence standard. "It merely requires that the evidence believed by the fact-finder be sufficient that the [petitioner] was more likely than not to have been a victim of domestic violence." *Commonwealth v. Anderson*, 934 S.W.2d 276, 278(Ky. 1996). Where the trial court sits as the finder of fact, those findings may only be set aside on appeal if clearly erroneous. CR 52.01; *Gomez v. Gomez*, 254 S.W.3d 838, 842(Ky.App. 2008). Further, the issue is not whether we would have decided the case differently; rather, our concern on appeal is whether the court's findings were clearly erroneous or an abuse of discretion. *Cherry v. Cherry*, 634 S.W.2d 423, 425(Ky. 1982).

While Meade's CR 52.02 motion properly preserved his request for additional findings, I am of the opinion that additional findings were unnecessary for meaningful appellate review. A review of the record in this case establishes that Judge Fitzgerald spoke at length about the three separate petitions before her, and that she concluded by plainly articulating her belief that Chambliss' testimony was the most credible and that domestic violence had occurred. The court clearly made the essential findings of domestic violence required by KRS 403.750(1). Judge Fitzgerald was in the best position to weigh the evidence, and she found Chambliss to be the most credible witness. Under our standard of review I see no

need to remand this matter for additional findings. Consequently, I would affirm the Jefferson Family Court.

BRIEF FOR APPELLANT:

Daniel J. Canon
Louisville, Kentucky

NO BRIEF FOR APPELLEE