

Commonwealth of Kentucky
Court of Appeals

NO. 2009-CA-001916-ME

SHAWN HAGERDASH

APPELLANT

v. APPEAL FROM HARDIN CIRCUIT COURT
HONORABLE PAMELA ADDINGTON, JUDGE
ACTION NO. 02-D-00005

ANNETTE BROCK; AND
CIANNA BROCK, by and through
natural mother Annette Brock

APPELLEES

OPINION
AFFIRMING

** ** * ** * ** *

BEFORE: DIXON AND KELLER, JUDGES; KNOPF,¹ SENIOR JUDGE.

DIXON, JUDGE: Shawn Hagerdash appeals from a domestic violence order entered against him by the Hardin Family Court, which precludes him from

¹ Judge William L. Knopf concurred in this opinion prior to the expiration of his term of Senior Judge service on May 7, 2010. Release of this opinion was delayed by administrative handling.

contacting his daughter, eight-year-old Cianna Brock, except during a weekly visit for parenting time. Finding no error, we affirm.

The relationship between Shawn and Cianna's mother, Annette Brock, ended shortly after Cianna's birth in 2001. Annette retained primary physical custody of Cianna, and Shawn had parenting time one day per week. On September 2, 2009, Annette, on behalf of Cianna, filed a domestic violence petition against Shawn. Annette alleged that, during Shawn's parenting time, he grabbed Cianna's jaw and slapped her face. Annette also alleged that Shawn, while on the phone with Cianna, threatened to "beat her [buttocks]" for being "sassy." Based on the petition, the court issued an EPO/Summons and set a hearing for September 14, 2009.

At the hearing, Shawn appeared *pro se*, and Annette appeared with counsel. Annette testified on direct examination, and the court asked Shawn to respond to the allegations. Shawn's testimony indicated he was frustrated with Cianna's behavior, both on the telephone and during visits, and he admitted slapping her for being disrespectful. Thereafter, the judge cleared the courtroom and interviewed Cianna *in camera*.

Cianna testified that, on the night in question, Shawn slapped her because she told him that she wanted to stay with her mother, rather than wait at a martial arts studio while Shawn taught a tae kwon do class. Cianna told the court

that they were alone in the car when Shawn slapped her and that it left a red mark on her cheek. Cianna further testified that, both before and after the incident, she would cry when Shawn told her over the phone that he would “beat her ‘other word for butt,’” if she misbehaved. At the conclusion of the interview, Cianna told the court that it had been a good week because her father had not called and threatened to spank or slap her.

When the hearing reconvened, the court allowed Shawn to make a final statement. The judge advised the parties that they could not call any witnesses, stating, “I don’t know that there’s anything, really, that could be added.”² Thereafter, the court entered a DVO against Shawn for a period of one year. Pursuant to the order, the court temporarily modified visitation by restricting Shawn’s parenting time to Saturdays, from 11 a.m. until 6:00 p.m.³ The court set a subsequent hearing date to review the visitation restrictions and to review Shawn’s progress in court-ordered counseling. Following the entry of the DVO, Shawn retained counsel, and this appeal followed.

Shawn asserts four arguments relating to alleged violations of his constitutional rights pursuant to the Fourth, Fifth, and Sixth Amendments to the United States Constitution and Section Fourteen of the Kentucky Constitution. Shawn’s allegations include the following: denial of his right to procedural due

² Annette had planned to call two witnesses, a social worker and domestic violence advocate. Shawn had planned to call his mother and his girlfriend to testify.

³ Shawn’s parenting time previously included one overnight visit per week.

process; denial of his right to be free from self-incrimination; denial of effective self-representation; and improper seizure of his parenting time.

At the outset, we note that Shawn cites only constitutional provisions in his brief, and he does not rely on any cases, rules, or statutes to support his arguments. Additionally, Shawn's brief fails to indicate whether he preserved the alleged errors for appellate review. CR 76.12(4)(c)(v). After careful consideration, we conclude Shawn's arguments are without merit.

A court may grant a DVO, following a full hearing, "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). "'Domestic violence and abuse' means 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). To satisfy the preponderance standard, the evidence must show that the victim "was more likely than not to have been a victim of domestic violence." *Commonwealth v. Anderson*, 934 S.W.2d 276, 278 (Ky. 1996).

Shawn contends he was denied procedural due process when the court failed to offer him the opportunity to cross-examine Annette and to call witnesses on his behalf.

In *Lynch v. Lynch*, 737 S.W.2d 184, 186 (Ky. App. 1987), this Court stated, "Due process requires, at the minimum, that each party be given a meaningful opportunity to be heard." Accordingly, prior to issuing a DVO, "the

court must provide a full evidentiary hearing conducted in compliance with statutory and court rules.” *Rankin v. Criswell*, 277 S.W.3d 621, 626 (Ky. App. 2008).

We have reviewed the hearing conducted in this case. The judge heard testimony from Annette, Shawn, and Cianna. Shawn admitted slapping Cianna, and Cianna testified that her father had also threatened her over the phone. While the judge could have offered Shawn the opportunity to cross-examine Annette, he did not raise the issue, and it is unclear what he hoped to elicit from Annette on cross. Likewise, Shawn did not object when the judge advised the parties she would not hear from additional witnesses, as there was nothing to add to the record regarding the incident of domestic violence. It is apparent that the court heard testimony from the only parties with first-hand knowledge of the abuse or threats, and it is unclear how the testimony of additional witnesses would have been relevant to the proceeding. Despite his argument to the contrary, our review indicates that the court afforded Shawn a full hearing, as required by the domestic violence statutes.

The court’s decision to enter a DVO was supported by sufficient evidence that established Shawn had committed domestic violence or abuse against Cianna and that it could recur. KRS 403.750(1). After careful consideration, we decline to address Shawn’s remaining constitutional claims, as they are without merit.

For the reasons stated herein, we affirm the order of the Hardin

Family Court.

ALL CONCUR.

BRIEF FOR APPELLANT:

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BRIEF FOR APPELLEES:

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