

RENDERED: JUNE 3, 2011; 10:00 A.M.  
NOT TO BE PUBLISHED

# Commonwealth of Kentucky

## Court of Appeals

NO. 2010-CA-000214-ME

JERRY PAUL ENNIS

APPELLANT

v. APPEAL FROM ALLEN CIRCUIT COURT  
HONORABLE G. SIDNOR BRODERSON, JUDGE  
ACTION NO. 07-D-00012

TAMMY ENNIS (NOW WAGNER)  
and THE HONORABLE  
JUDGE G. SIDNOR BRODERSON

APPELLEES

### OPINION VACATING AND REMANDING

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BEFORE: TAYLOR, CHIEF JUDGE; STUMBO, JUDGE; SHAKE,<sup>1</sup> SENIOR JUDGE.

STUMBO, JUDGE: Jerry Ennis appeals from an order overruling a motion to set aside a domestic violence order (DVO) issued by the Allen Circuit Court on July 28, 2009. The current DVO was a reissue and extension of a previous DVO. We

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<sup>1</sup> Senior Judge Ann O'Malley Shake 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.

find that the circuit court lacked the jurisdiction to reissue and extend the DVO.

We therefore vacate the DVO and remand this matter to be dismissed.

The original DVO in this case was issued on February 15, 2007, and expired on July 1, 2009. On July 14, 2009, Tammy Wagner filed a petition to reissue the DVO. In the petition, she did not state that there had been further acts of domestic violence, only that criminal charges had been brought against Mr. Ennis in another matter and that she wanted to extend the DVO until the criminal matters were resolved. A hearing was held and Ms. Wagner stated that she might have to testify against Mr. Ennis in the other criminal case. Testimony from Ms. Wagner and Mr. Ennis revealed that there had been absolutely no contact between the two parties since the original DVO was entered in 2007.

The trial court held that it was going to reissue the DVO and have it last three years. Mr. Ennis moved to set aside the order, arguing that there had been no contact between the parties since the original DVO and that the facts of the case did not justify reissuance of the DVO. The trial court overruled the motion and this appeal followed.

We find that the case of *Fedders v. Vogt-Kilmer*, 292 S.W.3d 905 (Ky. App. 2009), is controlling in this case.<sup>2</sup> In *Fedders*, Susannah Fedders appealed from an order extending a DVO for three more years. In that case, a DVO had been issued on December 12, 2006, and expired on December 12, 2007.

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<sup>2</sup> Ms. Fedders was the mother of Ms. Vogt-Kilmer.

On January 16, 2008, Stacie Ann Vogt-Kilmer moved to extend the DVO for three more years. The trial court granted the motion and Ms. Fedders appealed.

A panel of this Court found that the trial court lacked the jurisdiction to extend the DVO because it had expired on December 12, 2007, stating that:

once the DVO expired on December 12, 2007, that case was concluded and no further action could be based upon a DVO that had expired. By waiting until January 16, 2008 (some 35 days later), Vogt-Kilmer lost the ability to file to amend the order and should have filed a new domestic violence petition.

*Id.* at 908.

The facts in the case at bar are indistinguishable. Ms. Wagner did not seek to extend the DVO until after the underlying DVO had expired. Once the DVO expired on July 1, 2009, Ms. Wagner was required to file a new domestic violence petition. The evidentiary standards for initially issuing a DVO and for reissuing one are significantly different, thus this cannot be classified as harmless error. Further, based on the record before us, there was insufficient evidence to support a DVO in any event.

Based on the above, we vacate the reissued DVO and remand for an order dismissing.

ALL CONCUR.

BRIEF FOR APPELLANT:

Steven O. Thornton  
Bowling Green, Kentucky

NO BRIEFS FILED FOR  
APPELLEES: