

Commonwealth of Kentucky
Court of Appeals

NO. 2010-CA-002240-ME

CLINTON L. HUNTER

APPELLANT

v. APPEAL FROM CRITTENDEN FAMILY COURT
HONORABLE WILLIAM E. MITCHELL, JUDGE
ACTION NO. 10-D-00024

PATRICIA HUNTER;
AND COMMONWEALTH OF
KENTUCKY

APPELLEES

OPINION AND ORDER
DISMISSING

** ** * ** * ** *

BEFORE: KELLER, THOMPSON, AND WINE, JUDGES.

KELLER, JUDGE: The appellant, Clinton L. Hunter (Clinton), appeals from the Crittenden Family Court's denial of his motion to void an Emergency Protective Order (EPO) entered against him at a domestic violence hearing. It appears that Clinton wants to have the EPO voided so that his testimony at the domestic

violence hearing cannot be used as evidence to support criminal charges he is currently facing. For the following reasons, we dismiss his appeal.

FACTS

On May 6, 2010, Patricia Hunter (Patricia) filed a domestic violence petition in the Crittenden Family Court against Clinton, her husband's uncle, alleging that Clinton threatened her, held her down, and stole her prescription medication and cell phone. On the same day, the family court issued an EPO and scheduled a domestic violence hearing for May 11, 2010. Clinton was not present at the May 11 hearing because he had not been served. As a result, the trial court reissued the EPO and rescheduled the domestic violence hearing for May 25, 2010.

At the May 25 hearing, Patricia repeated her original allegations against Clinton, but he denied them. During his voluntary testimony, however, Clinton claimed that he lent money to Patricia with the expectation that she would repay him by selling her prescription medication. The family court denied Patricia's domestic violence petition for lack of sufficient evidence; however, Clinton's voluntary testimony apparently led the Commonwealth to file criminal charges against him. It is unclear from the record what the criminal charges are and whether they stemmed from Clinton's testimony regarding the alleged loan or Patricia's original allegations of abuse.

On October 13, 2010, Clinton filed a Kentucky Rule(s) of Civil Procedure (CR) 60.02 motion seeking to declare void the EPO entered as a result of the domestic violence petition. Specifically, he argued that the family court lacked

jurisdiction to enter the EPO because he did not qualify as Patricia's family member under the definition provided in Kentucky Revised Statute(s) (KRS) 403.720(2).

On October 19, 2010, the family court held a hearing on Clinton's CR 60.02 motion. Because the EPO was allegedly related to the criminal charges brought against Clinton, the Commonwealth made a motion at the hearing to intervene. The family court granted the Commonwealth's motion and determined that Clinton and Patricia qualified as family members under KRS 403.720(2) because they were related within two degrees of affinity under common law. As a result, the family court entered an order denying Clinton's motion to void the EPO. This appeal followed.

ANALYSIS-

On appeal, Clinton argues the family court misconstrued the domestic violence statute and wrongly determined that he and Patricia qualified as family members. As a result, he requests that we void the EPO, arguing the family court lacked jurisdiction to issue it. This we cannot do for the following reasons.

Clinton is incorrect in his assertion that the family court lacked jurisdiction to enter an EPO. Pursuant to KRS 403.740(1), the family court has jurisdiction to issue an EPO. We also note that Clinton pursued the wrong remedy when he filed the CR 60.02 motion. CR 60.02 allows a court to relieve a party from its "final judgment, order, or proceeding. . . ." An EPO, however, cannot extend for more than fourteen days before it expires and a date and a time for a hearing must be set

within that fourteen-day period. *See* KRS 403.740(2). Thus, it is interlocutory in nature and only temporarily adjudicates the rights of the parties. Therefore, it is not subject to CR 60.02 relief and is not properly before us. Finally, we note that Clinton has failed to raise a justiciable issue. The EPO entered against Clinton has already expired and no longer has any legal consequence. There is no remedy this Court could grant that would confer any meaningful legal benefit on Clinton; therefore, his appeal lacks a justiciable issue. *See Blakeman v. White*, 317 S.W.2d 497, 498 (Ky. App. 1958). Thus, any jurisdictional issues involving the EPO entered against Clinton are moot. Therefore, any opinion delivered by this Court on the issue raised by Clinton would be advisory and impermissible.

Commonwealth v. Hughes, 873 S.W.2d 828, 829 (Ky. 1994).

However, we note that there is an exception to the mootness doctrine for issues that are “capable of repetition but evading review.” *Id.* at 830. This exception to the mootness doctrine is determined by the following test: “(1) is the challenged action too short in duration to be fully litigated prior to its cessation or expiration and (2) [is there] a reasonable expectation that the same complaining party would be subject to the same action again.” *Id.* at 831. In this case, the first prong of this test is met because an EPO is only effective for a period of fourteen days and cannot be fully litigated before it expires. Clinton cannot, however, meet the second prong of this test. There is no evidence in the record indicating that Clinton will likely be subject to additional EPO actions. Further, Clinton no longer

qualifies as Patricia's family member in the version of KRS 403.720(2) now in effect.¹ Therefore, his appeal is not ripe for review and must be dismissed.

We note that it appears that what Clinton really wants is to bar the Commonwealth's use of his voluntary testimony at the domestic violence hearing as support for the criminal charges he is facing. Clinton has cited us to no authority that states that testimony obtained while a party was before a tribunal that allegedly lacked jurisdiction is inadmissible in a criminal proceeding. If a party does not cite to any authority for an argument, we are not required to address that argument. *See* CR.76.12; *Cherry v. Augustus*, 245 S.W.3d 766, 781 (Ky. App. 2006). Therefore, we decline to do so.

CONCLUSION

We determine that there are no jurisdictional issues that prevented the family court from issuing the EPO against Clinton. We also conclude that relief from such an order cannot be provided by a CR 60.02 motion. Even if it could, Clinton has failed to raise a justiciable issue. Accordingly, it is hereby ORDERED that Clinton's appeal be DISMISSED.

WINE, JUDGE, CONCURS.

THOMPSON, JUDGE, CONCURS IN RESULT ONLY.

¹ While the family court determined that Clinton and Patricia were family members under KRS 403.720(2) because they were related by two degrees of affinity, KRS 403.720(2) has subsequently been amended so that those related only by affinity do not qualify as family members.

ENTERED: JULY 22, 2011

/s/ Michelle M. Keller
JUDGE, COURT OF APPEALS

BRIEF FOR APPELLANT:

Gene Lewter
Frankfort, Kentucky

BRIEF FOR APPELLEE
COMMONWEALTH OF
KENTUCKY:

Natalie M. White
Assistant County Attorney
Eddyville, Kentucky

NO BRIEF FILED FOR APPELLEE
PATRICIA HUNTER