RENDERED: SEPTEMBER 16, 2011; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2011-CA-000572-ME

T.B. APPELLANT

v.

APPEAL FROM LAUREL FAMILY COURT
HONORABLE DURENDA LUNDY LAWSON, JUDGE
ACTION NO. 07-D-00127

M.S. APPELLEE

OPINION
AFFIRMING

** ** ** ** **

BEFORE: ACREE, CLAYTON AND WINE, JUDGES.

ACREE, JUDGE: T.B. appeals the February 22, 2011 entry of a domestic violence order (DVO) against him. We affirm.

Facts and procedure

At all relevant times, T.B. and M.S. lived together as an unmarried couple. M.S.'s minor child from a previous relationship, M.S. (child), also resided with the couple, and, for several years, M.S. cared for T.B.'s minor children, D.B. and A.B.

On January 15, 2011, M.S. filed a petition for an emergency protective order (EPO) alleging M.S. (child) had informed her that for the previous three years T.B. had engaged in sexual conduct with M.S. (child) and A.B. The EPO was granted, and a summons was issued.[1]

T.B. appeared with counsel for an evidentiary hearing on February 21, 2011. Following the hearing, the family court entered a DVO finding by a preponderance of evidence that an act of domestic violence had occurred and may occur again. The order required that T.B. vacate the parties' shared residence, remain five hundred feet away from M.S. and her minor child, and refrain from further acts of domestic violence. Temporary custody of D.B. and A.B. was awarded to the Cabinet for Health and Family Services, with T.B. to enjoy supervised visitation. This appeal followed.

T.B. asserts the family court committed an abuse of discretion in entering the DVO; however, because he takes issue only with the adequacy of the evidence supporting the family court's order, we conclude the correct standard of review, ordinarily, would be for clear error. That means we will reverse entry of the order only if we conclude that the findings were not supported by "evidence of substance

[1] Sometime prior to the hearing, T.B. obtained an EPO against M.S. At the conclusion of the evidentiary hearing, however, the family court declined to enter a DVO on the basis of T.B.'s allegations. T.B. has not appealed the family court's denial of his petition for a DVO against M.S.

and consequence when taken alone or in light of all the evidence that is sufficient to induce conviction in the minds of reasonable people." *McManus v. Kentucky Retirement Systems*, 124 S.W.3d 454, 458 (Ky. App. 2003) (citations omitted).

As M.S. notes, however, T.B.'s brief fails to comply with Kentucky Rule(s) of Civil Procedure (CR) 76.12 in some important respects. No portion of his brief contains a single citation to the record. CR 76.12(4)(c)(iv),(v). T.B.'s brief further fails to state where in the record he preserved the errors raised on appeal, or whether he preserved them at all. CR 76.12(4)(c)(v). Accordingly, we will review T.B.'s argument for manifest injustice only. *J.M. v. Commonwealth, Cabinet For Health and Family Services*, 325 S.W.3d 901, 902 (Ky. App. 2010) (citing *Elwell v. Stone,* 799 S.W.2d 46, 48 (Ky. App. 1990)).

T.B.'s assertion of error is so brief that we are able to set it out in its entirety as follows:

> ARGUMENT
>
> KRS [Kentucky Revised Statutes] 403.750 sets forth that the court, if it finds from a preponderance of the evidence that an act or acts of domestic violence and abuse have occurred and may occur again, may enter a Domestic Violence Order. The DVO entered must establish that an act or acts of domestic violence have occurred and may again occur. A full evidentiary hearing is required and a court's failure to hold a full evidentiary hearing constitutes violation of due process. The preponderance of the evidence standard is met with sufficient evidence to establish the alleged victim was more likely than not to have been a victim of domestic violence. Baird v. Baird, 234 S.W.3d 385 (Ky. App. 2007). In the case at hand, the Appellee was granted a domestic violence order based upon her self-serving testimony. The Appellee

> testified at the hearing that her daughter, [M.S. (child)], had informed [M.S.] that [T.B.] had engaged in sexual conduct with [M.S. (child)] and the Appellant's biological child, [A.B.], over a three-year period. The only other evidence presented was by Social Worker Kevin Marcum who testified that [M.S. (child)] informed him that she had not been sexually abused, but changed her story later when interviewed by a state policeman. The only testimony was hearsay evidence.

Reviewing for manifest injustice, we find none. Kevin Marcum, a Social Worker with the Kentucky Cabinet for Health and Family Services, testified that the allegations of child sexual abuse against T.B. had been substantiated with respect to M.S. (child). Marcum further testified that his recommendation that D.B. and A.B. be removed from T.B.'s custody was based upon the serious nature of the substantiated allegations of abuse of M.S. (child). T.B. did not object to this testimony. Furthermore, on cross-examination of M.S., T.B.'s attorney elicited hearsay testimony that T.B. had sexually abused A.B. and that T.B.'s abuse of M.S. (child) had been occurring for two or three years, mostly while M.S. was asleep. T.B.'s protestations that the DVO should be reversed because it was based upon hearsay and insufficient evidence are therefore not persuasive.

We are confident from our review of the record that no manifest injustice befell the appellant.

For the foregoing reasons, we affirm.

ALL CONCUR.

BRIEF FOR APPELLANT:

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BRIEF FOR APPELLEE:

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