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NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2015-CA-000053-ME

DONALD LEE WEST

APPELLANT

v.

APPEAL FROM CAMPBELL CIRCUIT COURT
HONORABLE RICHARD A. WOESTE, JUDGE
ACTION NO. 08-D-00052

ALICIA BROSSART

APPELLEE

OPINION
AFFIRMING

** ** * * * * *

BEFORE: ACREE, CHIEF JUDGE; CLAYTON AND KRAMER, JUDGES.

ACREE, CHIEF JUDGE: The issue presented in this appeal is whether the trial court erred in denying Donald West's motion to amend a Domestic Violence Order (DVO) which prohibited contact between West and his children. After careful review of the record, we affirm.

I. FACTUAL AND PROCEDURAL BACKGROUND

Alicia Brossart filed for and, on March 5, 2008, was granted an Emergency Order of Protection from Donald West on behalf of herself and the parties' children. Her petition stated West had been recently charged with fourth-degree domestic violence and possession of a firearm, and the police had been called to their residence several times while he was out of jail on bond. The family court found Brossart had established by a preponderance of the evidence that an act of domestic violence or abuse had occurred or may again occur. Brossart was granted a DVO effective through March 12, 2011. The DVO restrained West from any contact or communication with Brossart, and he was ordered to remain at least 1,500 feet away from Brossart and their children.¹

Beginning in September 2008 through November 2010, Brossart submitted seven domestic violence show cause orders detailing West's attempts to contact and threaten her and the children in violation of the DVO. The record shows that West placed harassing telephone calls and left harassing messages, contacted neighbors in an effort to find out information as to Brossart's whereabouts, that West was carrying a loaded weapon, that he followed her at all times, and that Brossart's friends warned her that West was coming on the property at night. Brossart contacted the police at least twice while the DVO was in effect regarding West's inappropriate behavior. West was incarcerated on two different

¹ At the time the DVO was issued in 2008, the record shows the ages of the children were three, four, and five years.

occasions for violations of the DVO. He was also ordered by the family court to enroll in counseling, and anger management and parenting classes. West provided the court with proof of his participation in these programs.

In February 2011, Brossart filed a motion to amend the DVO to extend its terms for an additional three years. Her motion stated that West was violent and it referenced his past DVO violations. Brossart also indicated there were two warrants out for his arrest for DVO violations and for failing to pay child support. The family court extended the terms of the DVO to be effective until March 12, 2014.

As the expiration of the extension of the DVO approached, Brossart filed another motion to amend the DVO in February 2014. She again asked the family court to extend the terms for another three years. The family court granted Brossart's motion and extended the terms of the DVO until March 6, 2017. The court noted that violent injuries led to the issuance of the DVO and took into account the numerous violations that had since occurred.

West filed a motion to amend the DVO on October 29, 2014. He asked the court to remove the no-contact provisions that apply to the parties' children because he had a separate motion for visitation pending in family court. West had been instructed by the court that his visitation motion could not be heard until the no-contact provision had been addressed. After a hearing, the family court denied West's motion to amend the DVO. The family court observed the

significant domestic violence in the parties' past and its effect on their children. The court also remarked that there was evidence suggesting the children were still afraid of West. West's motion for visitation was also denied as the no-contact provision of the DVO remained in place. This appeal followed.

II. STANDARD OF REVIEW

Review of a trial court's decision to amend a DVO requires that the reviewing court determine "whether the court's findings were clearly erroneous or that it abused its discretion." *Gomez v. Gomez*, 254 S.W.3d 838, 842 (Ky. App. 2008)(citing *Cherry v. Cherry*, 634 S.W.2d 423, 425 (Ky. 1982)).

III. ANALYSIS

West contends on appeal that the family court's decision not to amend the DVO to allow for contact with his children effectively permanently terminated his parental rights although he is still required to pay child support.

We find no merit in West's argument.

The purpose of a DVO is to provide "victims of domestic violence and abuse . . . effective, short-term protection against further violence and abuse." KRS² 403.715(1). Not only are the procedures and standards involved with obtaining a DVO separate and distinct from those in a termination action, the relief sought from a DVO does not effectuate the same result as a termination of parental rights proceeding.

² Kentucky Revised Statutes.

When parental rights are permanently terminated, so are all other parental responsibilities. KRS 625.100. Here, West's parental rights, and obligations, remain as they have always. However, children have rights, too. Specifically, they have the right to protection from a parent whose very acts of violence require his right to parent be subordinated. Under the domestic violence laws, the right to parent can be reclaimed; under the termination-of-parental-rights laws they cannot. A no contact provision with a fixed duration in a DVO does not reflect the permanency established in termination actions.

Here, the previous extensions of the terms of the DVO have been the result of conduct within West's own self-control – a control he is not wont to exercise. Accordingly, we disagree that the family court's decision not to amend the DVO to allow contact between West and his children effectively permanently terminated his parental rights.

West further argues that the family court did not make any specific findings regarding visitation as required by KRS 403.320. However, consideration of West's motion for visitation was dependent upon the court's determination regarding the amendment to the DVO. Based upon the totality of the circumstances between the parties and the evidence presented at the hearing, the family court decided to leave the DVO's no-contact provision in place. Consequently, it was not necessary for the family court to address West's visitation motion and the standards provided in KRS 403.320.

Therefore, we conclude the family court did not abuse its discretion by denying West's motion to amend the DVO.

IV. CONCLUSION

For these reasons, the Campbell Circuit Court's order denying the motion to amend the DVO is affirmed.

ALL CONCUR.

BRIEFS FOR APPELLANT:

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