

**Commonwealth of Kentucky**  
**Court of Appeals**

NO. 2015-CA-000291-ME

DERRICK ISAAC

APPELLANT

v. APPEAL FROM JEFFERSON CIRCUIT COURT  
HONORABLE PAULA SHERLOCK, JUDGE  
ACTION NO. 15-D-500110-001

AIMEE ISAAC, INDIVIDUALLY AND/OR  
ON BEHALF OF L.I., A MINOR CHILD

APPELLEE

OPINION  
VACATING AND REMANDING

\*\* \*\* \* \*\* \* \*\* \*

BEFORE: DIXON, NICKELL, AND TAYLOR, JUDGES.

NICKELL, JUDGE: Derrick Isaac challenges entry of an order of protection on January 23, 2015. He claims the Jefferson Family Court lacked jurisdiction and venue to hear the matter because the family had no ties to Louisville, and litigation was already pending in Madison County where he resided with his fifteen-year-old

daughter, L.I.,<sup>1</sup> for whose protection the domestic violence order (DVO) was entered. Having reviewed the record, the briefs and the law, we vacate and remand for further action consistent with this Opinion.

## FACTS

L.I., a girl, was born to Derrick and Aimee Isaac on April 4, 1999. That same year, Derrick and Aimee's marriage was dissolved by the Chancery Court for Hamblen County in Morristown, Tennessee. Between 1999 and 2005, Derrick and Aimee shared custody of L.I. and a son, D.I. According to L.I., the marriage was turbulent and Derrick "beat [Aimee] almost to death." L.I. stated Derrick hides vodka, there is a history of violence in the home, she doubts her home life with her father will ever change, and she is afraid of her father.

In July 2005 the Tennessee court heard a petition to modify custody. Aimee had moved to California and did not appear at the hearing. As a result of the petition, the court named Derrick the primary residential parent, gave Aimee restricted visitation with the children in her parents' home in Tennessee, and ordered Aimee to pay child support.<sup>2</sup>

In 2013, as L.I. became a teenager, she became defiant. She repeatedly snuck out of the house, sent nude pictures of herself to boys via her cell

---

<sup>1</sup> Pursuant to Court policy, child victims are referred to by initials only.

<sup>2</sup> Derrick claims Aimee is more than \$102,000.00 in arrears. He states he has filed Case No. 15-CI-50003 in Madison County to resolve custody and child support issues. In the instant action, the Jefferson Family Court gave only temporary custody of L.I. to Aimee, leaving the ultimate decision to the Madison Family Court. Pleadings filed in Madison County are not part of the record before us.

phone and the internet, and became sexually active at the age of fourteen. To discipline L.I., Derrick withheld privileges, removed her from the cheerleading squad, and denied her cell phone access. The more Derrick tried to control L.I., the more L.I. rebelled.

December 2014 was a pivotal month. Derrick began addressing beyond control issues with Court Designated Worker (CDW) Sherry Ausness. On December 4, 2014, L.I. told Derrick she was sick and stayed home from school. Unbeknownst to Derrick, L.I. had invited a male to come to the home while Derrick was at work. Derrick believes this is the day L.I. conceived a child.

Later that month, Derrick drove his children to his parents' home in Letcher County. According to Derrick, upon arriving, L.I. cursed her grandmother. As punishment for cursing, Derrick sent L.I. to a bedroom by herself. When L.I. threatened to run away on this exceptionally cold day, Derrick physically restrained her by the arm, causing bruising which was photographed.

L.I.'s account of the trip differs. According to her, she and Derrick argued while en route to her grandparents' home and once there, Derrick shoved her against walls and onto the bed, causing bruises. L.I.'s grandmother told L.I. she was "possessed by a demon." In a previous incident, Derrick had pinned L.I. to the floor in his office and screamed in her face.

Difficulties between Derrick and L.I. came to a head on January 14, 2015. On that day, Derrick drove his daughter to an abortion clinic in Louisville. Once there, Derrick says L.I. became scared and a pro-life advocate spirited her

away. Again, L.I.'s version differs. L.I. says she agreed to the appointment because the clinic needed her approval and Derrick had warned her she would not raise the child in his home. Once at the Louisville clinic, L.I. refused to sign for the procedure and the clinic would not accept Derrick's signature on her behalf. After speaking with a woman at the clinic, L.I. walked outside where a protestor befriended her, helping her secure a free ultrasound and discussing options to abortion such as Lifehouse<sup>3</sup> and adoption.

While in the company of pro-life advocates, L.I. spoke to Aimee, who now lives in Maryland, via speakerphone. Despite Derrick's efforts to prevent L.I. from contacting Aimee, L.I. had managed to maintain a connection with her mother. Aimee was told Derrick was trying to force L.I. to undergo an abortion; he was angry; and police were being called.<sup>4</sup> After touring Lifehouse, Derrick and L.I. returned to their home in Madison County.

The next day, January 15, 2015, Aimee arrived in Kentucky and filed a Domestic Violence Petition/Motion in Jefferson Family Court on L.I.'s behalf stating:

Petitioner, on behalf of minor child(ren) says that on on (sic) 1/14/2015 in JEFFERSON County, Kentucky, the above-named Respondent engaged in act(s) of domestic violence and abuse, in that\*: Derrick is my ex-husband. We have 2 children in common. I am filing on behalf of our daughter, [L.I.], age 15. I live out of state but will stay here until the court date if the court finds it necessary. On Jan 14, I received a call from [L.I.] from

---

<sup>3</sup> A residential maternity home in Louisville for young pregnant women.

<sup>4</sup> No police report of this particular event appears in the appellate record.

the phone of a worker at a counseling center for pregnant mothers here in Jefferson County. The workers were on speakerphone telling me that Derrick was trying to force her to have an abortion. The counselor also told me that Derrick was angry in the waiting area & they were calling the police. Prior to this, [L.I.] has been calling me saying that she is afraid of him. She also told me that he has removed all forms of communication from her. When she did have communication, she sent me text messages, one saying that her grandmother had watched him throw her around, saying she was possessed. She has made comments that “she doesn’t want to do this anymore”, “she would like to go to sleep & not wake up”. She also said that “she doesn’t care if she lives or dies”. In Dec, she sent me a picture of her right arm with bruises on it. My attorney & I are working with CPS on a long term investigation & we are filing for permanent custody. I feel that [L.I.’s] life & the life of her unborn child is in danger in an immediate sense based on her emotional status & alleged abusive conditions. Since Oct 2013, [L.I.] has alleged that Derrick has been verbally & physically abusive. I filed a case with CPS but it was dismissed & now we have new (sic) case that is open. In the last three days, the situation has become so volatile that no one knows where she is but based on our last communication, we believe that [L.I.] is here in Jefferson County & she needs emergency care & assessment. Derrick has a history of abuse with me & that was the reason for our divorce. I am afraid for [L.I.] & want him to stay away.

That afternoon, an Emergency Order of Protection (EPO) was entered by Jefferson Family Court giving temporary custody of L.I. to Aimee. Later that day, police removed [L.I.] from Derrick’s home. The following day, Derrick learned L.I. was not with Aimee.

On January 23, 2015, the court heard the petition. At the outset, Derrick’s counsel questioned the Jefferson Family Court’s jurisdiction and urged

transfer of the petition to Madison County so the child could return to school. As grounds for transfer, Derrick alleged: some conduct alleged in the petition occurred in Madison County; Derrick has custody of the child and both live in Madison County; Aimee lives in Maryland and has no ties to Jefferson County; on January 7, 2015, about a week before Aimee filed the petition, Derrick filed a Notice and Affidavit of Foreign Judgment Registration in Madison County;<sup>5</sup> there is an open Child Protective Services (CPS) investigation in Madison County; Derrick has been working with a CDW in Madison County; and, L.I. is still enrolled in Oneida Baptist Institute but had not attended school and had been missing for at least a week.

In response, Aimee's counsel opposed transfer and explained the petition was filed in Jefferson County because that was the child's last known whereabouts based on a phone call to Aimee originating from the counseling center in Louisville. Aimee's attorney stated Aimee was not forum shopping.

The court stated it was confident it had jurisdiction to hear the matter, but since Madison County would ultimately decide the custody issue, questioned whether a piecemeal approach was proper due to the child's immediate needs, or whether Madison County should resolve the entire matter. The court chose to go forward and hear the DVO petition rather than transferring it to Madison County as Derrick had urged.

---

<sup>5</sup> This pleading was not served on Aimee at the time of filing and still had not been served as of the hearing.

Testimony from Aimee and Derrick was heard in open court. The court then spoke privately with L.I. in chambers. During their conversation, L.I. identified a photo of her bruised arm; told how the bruising occurred; chronicled a violent home life impacting her, her siblings and her mother; stated she needed counseling; acknowledged engaging in certain behaviors with the hope her father would change, but he did not; confirmed her belief Aimee was her best option for a tranquil life and she would obey her mother's rules; and, concluded her testimony by stating she desired no contact with her father.

When L.I. and the judge returned to the courtroom, Derrick's attorney asked to offer additional testimony from L.I.'s grandmother to explain how his daughter's arm had been bruised. The court ruled it was certain the proposed witness would support Derrick's story, and it would hear no more witnesses, having already devoted an hour<sup>6</sup> to the matter and having delayed the remainder of the day's court docket. The court further stated it could not ignore the child's bruises, nor her compelling testimony.

Thereafter, the court reminded everyone L.I. is a fifteen-year-old child and while it is difficult to parent a teenager, one cannot put one's hands on her. The court went on to say returning the child to Derrick's custody was not a good solution, and under the circumstances placing L.I. in a private Christian academy was not a particularly good idea and not one L.I. wanted. Thereafter, the court expressed hope that L.I. would receive therapy and work on her relationship with

---

<sup>6</sup> The hearing began at 9:46:50 a.m. and concluded at 11:14:00 a.m.

her father. The court entered the DVO and awarded temporary custody to Aimee, pending final resolution of the matter in Madison County. Aimee asked that the DVO continue until L.I.'s eighteenth birthday.

Derrick appealed timely. We now vacate and remand.

#### ANALYSIS

Our starting point is KRS<sup>7</sup> 403.725 detailing who may petition for a protective order. KRS 403.725(3) allows an adult family member to file a petition on behalf of a minor family member. Thus, Aimee's filing of a petition for a DVO on her fifteen-year-old daughter's behalf was statutorily permitted.

We next consider KRS 403.725(1), which specifies where a petition is to be filed. That provision reads:

Any family member or member of an unmarried couple who is a *resident of this state* or has fled to this state to escape domestic violence and abuse may file a verified petition in the District Court of the *county in which he resides*. If the petitioner has left his usual place of residence within this state in order to avoid domestic violence and abuse, the petition may be filed and proceedings held in the District Court in the county of his *usual residence* or in the District Court in the county of *current residence*. Any family member or member of an unmarried couple who files a petition for an emergency protective order in District or Circuit Court shall make known to the court any custody or divorce actions, involving both the petitioner and the respondent, that are pending in any Circuit Court in the Commonwealth. The petition shall also include the name of the court where filed.

---

<sup>7</sup> Kentucky Revised Statutes.



(Emphasis added). Clearly, the controlling word in the statute is “residence” which requires us to consider how that term is defined. “Legal residency is based on fact and intention.” *Perry v. Motorists Mut. Ins. Co.*, 860 S.W.2d 762, 764 (Ky. 1993) (citing *Ellison v. Smoots, Admr.*, 286 Ky. 768, 151 S.W.2d 1017 (1941)). Here, there was no evidence L.I. lived in, or evinced an intention to remain in, Jefferson County. In proceeding with the hearing after Derrick requested transfer to Madison County, the Jefferson Family Court simply stated, “I’m quite sure we have jurisdiction,” without making any findings substantiating that statement. Without proof of L.I. being a resident of Jefferson County—there was no indication the child spent even twenty-four hours in the county—we have no choice but to conclude the Jefferson Family Court lacked jurisdiction to proceed and should have granted the father’s request for transfer to Madison County where the child lived with her father. There was also no testimony L.I. fled to Jefferson County to “escape domestic violence and abuse.” The testimony was that she agreed to an appointment at an abortion clinic and presumably willingly travelled there with her father. It was only after she reached the clinic and encountered abortion protestors, that the plan changed.

Aimee’s citation to *Cottrell v. Cottrell*, 114 S.W.3d 257 (Ky. App. 2003) is unpersuasive. In that case, Bullitt Circuit Court had dissolved a marriage but reserved property division for subsequent resolution. The ex-wife returned to her parents’ home in Warren County, and while residing in Warren County, sought and received a DVO in Warren Family Court. This created a situation in which the

ex-wife petitioned for relief in Warren County while the ex-husband sought relief in Bullitt County resulting in a need for “‘traffic control’ among competing venues in which the same relief is sought.” *Id.* at 258. Here, there was simply no proof of any ties to Jefferson County other than a brief visit to an abortion clinic followed by a brief visit to a counseling center.

We recognize the Jefferson Family Court was trying to expedite a delicate situation, but ignoring basic questions of jurisdiction and venue did not help matters in the long run. A trial court must have jurisdiction for its actions to have meaning and carry the force of law.

Derrick has raised an additional matter. He claims the trial court abused its discretion in preventing him from calling his mother (L.I.’s grandmother) to explain how the child’s arm became bruised. A trial court exercises “reasonable control” over the presentation of evidence. KRE<sup>8</sup> 611(a). In this case, the trial court determined it had heard enough testimony from Aimee, Derrick and L.I. to make its decision. The trial court was also operating within time constraints and had already delayed its docket to devote additional time to this particular case.

Derrick has not identified any testimony his mother would have given that would have differed from his own words and swayed the judge to rule in his favor—especially in light of photographic evidence of L.I.’s bruised arm and L.I.’s poised and graphic testimony of Derrick’s actions which included him making L.I.

---

<sup>8</sup> Kentucky Rules of Evidence.

watch him destroy the guitar her mother had given her and then locking her out of the family home. Had there been any non-cumulative evidence, Derrick could have put on avowal testimony which would be in the record for us to consider. There being no such testimony in the record, we have no basis upon which to conclude the trial court abused its discretion in not hearing testimony from Derrick's mother. *Bayless v. Boyer*, 180 S.W.3d 439, 447 (Ky. 2005).

Therefore, due to a lack of jurisdiction, we must vacate the DVO entered by the Jefferson Circuit Court on January 23, 2015, and declare it void. Furthermore, the trial court committed clear error under KRS 452.105 in not transferring the petition to Madison County as Derrick requested at the outset of the hearing. Thus, the DVO is vacated and the matter is remanded to the Jefferson Family Court for further action consistent with this Opinion, which may or may not include transferring the petition to the Madison Family Court. Because Derrick had filed pleadings in Madison County, we realize transfer may no longer be appropriate and leave that decision to the wisdom of the Jefferson Family Court.

ALL CONCUR.

BRIEF FOR APPELLANT:

James W. Baechtold  
Richmond, Kentucky

BRIEF FOR APPELLEE:

Randall S. Strause  
Louisville, Kentucky