

RENDERED: AUGUST 26, 2016; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky
Court of Appeals

NO. 2015-CA-000615-ME

GREGORY W. RICHARDSON

APPELLANT

v. APPEAL FROM BARREN CIRCUIT COURT
HONORABLE W. MITCHELL NANCE, JUDGE
ACTION NO. 14-D-00076-004

SONDRA K. RICHARDSON

APPELLEE

OPINION
AFFIRMING

** ** * ** * **

BEFORE: JONES, D. LAMBERT, AND MAZE, JUDGES.

MAZE, JUDGE: Gregory Richardson (Gregory) appeals from the Barren Circuit Court's entry of a Domestic Violence Order (DVO) against him and in favor of Appellee, Sondra Richardson (Sondra). Gregory alleges that the trial court abused its discretion due to inconsistencies in Sondra's testimony. Because sufficient

evidence existed in the record to support a finding that domestic violence between the parties had occurred and may recur, we affirm.

Relevant Facts

Gregory and Sondra were married on June 6, 2010. After Gregory and Sondra filed petitions for DVOs against each other, the Barren County Family Court conducted a hearing on both petitions on March 27, 2015. Both Gregory and Sondra appeared *pro se*.

After Sondra admitted to the court that she had previously grabbed Gregory's "private area" without his consent, the court entered a DVO against Sondra. Sondra then testified to several incidents. She stated that on or about February 25, 2015, while riding in Gregory's truck, she and Gregory began arguing. Gregory then struck Sondra in front of her daughter, giving Sondra a black eye and causing her head to hit the window. Gregory stated at the hearing that he had given Sondra a black eye "by blocking her punches." Later, Sondra said that there were "several days" that Gregory had "put [his] hands on [her]." Sondra also testified that Gregory came into their home with a baseball bat looking for clothes. Sondra testified that Gregory had grabbed her arm forcefully while they were at a hospital, though Gregory testified that this was in response to her attempting to reach into his pants pocket to take out some money. The court ultimately granted the DVO against Gregory. This appeal follows.

Analysis

We note that Sondra did not file a brief in this appeal. CR¹ 76.12(8)(c) permits this Court to impose sanctions upon Sondra, including reversal in Gregory's favor. However, these sanctions are imposed at our discretion. *See Roberts v. Bucci*, 218 S.W.3d 395, 396 (Ky. App. 2007). In this instance, in an appeal concerning domestic violence, we elect not to impose sanctions for Sondra's failure to file a brief.

We also note that Gregory failed to cite any legal authority in his brief. "Our courts have established that an alleged error may be deemed waived where an appellant fails to cite any authority in support of the issues and arguments advanced on appeal." *Drummond v. Todd Cty. Bd. of Educ.*, 349 S.W.3d 316, 325 (Ky. App. 2011) (quoting *Hadley v. Citizen Deposit Bank*, 186 S.W.3d 754, 759 (Ky. App. 2005)). However, we elect to proceed to the merits of Gregory's appeal, as our conclusion is unaffected by his failure to cite supporting legal authority.

KRS² 403.720(1) defines "domestic violence and abuse" as "physical injury, serious physical injury, stalking, sexual abuse, assault, or the infliction of fear of imminent physical injury, serious physical injury, sexual abuse, or assault between family members or members of an unmarried couple[.]" KRS 403.740(1) provides that "if a court finds by a preponderance of the evidence that domestic violence and abuse has occurred and may again occur, the court may issue a domestic violence order...." The standard is satisfied if evidence establishes that the petitioner "was more likely than not to have been a victim of domestic

¹ Kentucky Rules of Civil Procedure.

² Kentucky Revised Statutes.

violence.” *Commonwealth v. Anderson*, 934 S.W.2d 276, 278 (Ky. 1996)). An appellate court reviews the trial court’s issuance of a DVO to determine “whether the court’s findings were clearly erroneous or ... it abused its discretion.” *Gomez v. Gomez*, 254 S.W.3d 838, 842 (Ky. App. 2008).

Gregory argues on appeal that the trial court erred in granting a DVO against him because Sondra lied under oath concerning several incidents and facts, tested positive for marijuana, and did not have good character. However, these allegations are neither revelatory nor dispositive. Gregory provided much of this information during the hearing in an effort to impeach Sondra’s testimony. More importantly, Gregory does not assert on appeal any additional evidence that materially contradicts Sondra’s underlying allegations or undermining the basis for the trial court’s finding. As the fact-finder, the trial court was permitted to believe Sondra’s explanation, even if inconsistent or contradicted, as long as it constituted evidence of substance. *See Hohman v. Dery*, 371 S.W.3d 780, 783 (Ky. App. 2012) (“We reiterate that the family court is in the best position to judge the credibility of the witnesses and weigh the evidence presented.”). Sondra presented the trial court with conflicting, but substantial evidence. Therefore, the trial court did not err in merely choosing to believe Sondra’s testimony.

Conclusion

The evidence in this case was sufficient for the trial court to find that domestic violence had occurred and may occur again. Therefore, the Barren Circuit Court’s entry of the DVO against Gregory is affirmed.

[ALL CONCUR]

BRIEF FOR APPELLANT:

NO BRIEF FILED FOR APPELLEE

Gregory W. Richardson
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