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ALABAMA COURT OF CIVIL APPEALS

OCTOBER TERM, 2020-2021

2190904

T.K.

v.

B.K.

Appeal from Madison Circuit Court
(DR-20-3281)

THOMPSON, Presiding Judge.

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On July 24, 2020, B.K. ("the wife") filed in the Madison Circuit Court ("the trial court") a sworn protection-from-abuse petition ("PFA") against her former husband, T.K. ("the husband"). After entering a temporary, ex parte PFA order on July 24, 2020, the trial court held a hearing on the petition on August 7, 2020. The record indicates that no testimony or other evidence was presented at the hearing. However, at that hearing, the parties did orally agree to the issuance of a mutual "no-contact order" as opposed to a final PFA order. At the end of the hearing, the trial-court judge stated to the husband: "[I]f you violate the no-contact order you're not going to be possessing a weapon anywhere, anytime. Do you understand?"

Despite the parties' agreement, the trial court entered a final PFA order on August 7, 2020. The order states in relevant part:

"The court having considered the testimony presented ore tenus, enters the following orders:

"1. By consent of the parties the Ex parte Protection Order entered in this case on July 24, 2020 ... is made a Final Order. ...

"... .

"3. [T]here has been a finding by the court of domestic violence committed by the [husband] against the [wife]."

(Capitalization omitted.) On August 20, 2020, the husband filed a motion to alter, amend, or vacate the final PFA order. The trial court denied that motion on August 21, 2020. The husband timely appealed.

On appeal, the husband argues that the final PFA order was unsupported by the evidence. Specifically, the husband argues that the trial court did not receive ore tenus testimony or other evidence regarding the PFA petition at the hearing. The husband contends, therefore, that the trial court could not have found that he had committed acts of domestic abuse against the wife. He also argues that the record indicates that the parties consented to the entry of a no-contact order, not to the entry of a PFA order as the trial court stated in the final PFA order.

We conclude, upon review of the record, that the husband is correct that no ore tenus evidence was presented at the hearing on the PFA petition. Moreover, beyond the allegations presented in the wife's PFA petition, no evidence was presented to show that the husband committed acts of domestic abuse against the wife. Finally, the record indicates that

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the husband is correct that the parties agreed to the entry of a no-contact order as opposed to a PFA order.¹ In light of the foregoing, we hold that the trial court's final PFA order was unsupported by the evidence. See, e.g., Willis v. Willis, 45 So. 3d 347, 349-50 (Ala. Civ. App. 2010) (remanding a case for a new trial because the trial court failed to hold an evidentiary hearing before it determined an award of child support). We reverse the final PFA order and remand the case for the trial court to conduct an evidentiary hearing on the issue.

REVERSED AND REMANDED WITH INSTRUCTIONS.

Edwards, Hanson, and Fridy, JJ., concur.

Moore, J., concurs in the result, without writing.

¹We note that § 30-5-5(d), Ala. Code 1975, states: "The court shall not enter mutual orders. The court shall issue separate orders that specifically and independently state the prohibited behavior and relief granted in order to protect the victim and the victim's immediate family and to clearly provide law enforcement with sufficient directives." Therefore, under this statute, the trial court cannot enter a mutual order regardless of the parties' oral agreement.