Cite as 2010 Ark. App. 385

ARKANSAS COURT OF APPEALS

DIVISION II
No. CA09-1180

	Opinion Delivered MAY 5, 2010
CHICKILAH DAVENPORT APPELLANT	APPEAL FROM THE JEFFERSON COUNTY CIRCUIT COURT [NO. DR-2009-1153-3DA]
V.	HONORABLE WILLIAM BENTON, JUDGE
KENNETH BURNLEY APPELLEE	AFFIRMED

M. MICHAEL KINARD, Judge

Chickilah Davenport appeals from the circuit court's entry of an order of protection against her, which was sought by appellee, Kenneth Burnley, who is the father of Davenport's child. Appellant argues on appeal that there was insufficient evidence produced at the hearing to support the trial court's finding that she committed domestic abuse. We disagree and affirm.

On July 16, 2009, appellee filed a petition for an order of protection. In the petition, appellee alleged that appellant came to his home the previous Friday night with a gun. Appellant fired three shots; two shots hit the ground, and the third struck appellant in the hand. According to appellee, appellant was beating on the door, demanding to be let inside. Appellee stated in the verified petition that he was afraid appellant might do something to him and his son "because of the court order she is about to receive." On July 16, 2009, the trial

court entered an ex parte temporary order of protection to be in effect pending a hearing on appellee's motion.

At the hearing, appellee testified that, on the night of July 10, 2009, he heard a knock on his door. He did not see anyone outside. He then heard another knock. Again, he did not see anyone outside. Appellee then heard appellant saying that she wanted him to let her inside the house. Appellee refused to let her in, then he heard three gunshots. Appellant identified herself and asked to be let inside the house. Appellant asked appellee to call an ambulance because she had shot herself. Appellee called the police and waited until they arrived before opening the door.

Trent Augland, an officer with the Pine Bluff Police Department, testified that, when he arrived at appellee's home, he found appellant crouching between the screen door and the interior door. Appellant told the officer that she shot herself in the finger. The police found the gun under a barbecue grill in front of the home. Officer Augland testified that two of the shots hit the ground fifteen feet to the west of the door. He indicated that the shooter would have been pointing the gun away from the door. The police found no shots either in the door or in the side of the house.

Appellant testified that she went to appellee's home on July 10, 2009, because he had called the Arkansas Department of Human Services, claiming that her home was unsafe for their son. Appellant stated that she was outside of appellee's home, attempting to unload the gun when the gun started firing. Appellant denied pointing the gun at appellee or his home;

she also denied ever making threats toward appellee. Appellant admitted that appellee did not know that she was coming to his house that night and that she parked her car down the street so that he could not see it. Appellant testified that the child was not present at the house.

After the testimony, the circuit court found that appellant's conduct fell within the definition of "domestic abuse." The circuit court found that appellant's actions caused fear of imminent physical harm or bodily injury in appellee because "any rational person would be fearful under those circumstances." The circuit court granted appellee's petition, and on September 8, 2009, entered an order of protection against appellant. Appellant filed a timely notice of appeal on October 2, 2009.

Our standard of review following a bench trial is whether the circuit court's findings are clearly erroneous or clearly against the preponderance of the evidence. *Newton v. Tidd*, 94 Ark. App. 368, 231 S.W.3d 84 (2006). A finding is clearly erroneous when, although there is evidence to support it, the reviewing court on the entire evidence is left with a definite and firm conviction that a mistake has been made. *Simmons v. Dixon*, 96 Ark. App. 260, 240 S.W.3d 608 (2006). Disputed facts and determinations of credibility of witnesses are both within the province of the fact finder. *Pablo v. Crowder*, 95 Ark. App. 268, 236 S.W.3d 559 (2006).

Appellant's sole point on appeal is that the trial court erred in entering an order of protection against her on the basis that she caused appellant fear of imminent physical harm or bodily injury because there was no evidence presented at the hearing that she did so.

Appellee filed his petition pursuant to Chapter Fifteen of Title Nine of the Arkansas Code. The purpose of that chapter is to "provide an adequate mechanism whereby the State of Arkansas can protect the general health, welfare, and safety of its citizens by intervening when abuse of a member of a household by another member of a household occurs or is threatened to occur." Ark. Code Ann. § 9-15-101 (Repl. 2009). A petition filed under the chapter must allege the existence of domestic abuse. Ark. Code Ann. § 9-15-201(e)(1)(A) (Repl. 2009). "Domestic abuse" is defined as physical harm, bodily injury, assault, or the infliction of fear of imminent physical harm, bodily injury, or assault between family or household members. Ark. Code Ann. § 9-15-103 (Repl. 2009). The definition of "family or household members" includes persons who have a child in common. Ark. Code Ann. § 9-15-103(4) (Repl. 2009). Appellant and appellee are the parents of a minor child who was in appellant's custody at the time of the incident. Although appellant did not reside with appellee at the time of the incident, they are "family or household members." The court may grant relief to the petitioner upon a finding of domestic abuse. Ark. Code Ann. § 9-15-205(a) (Repl. 2009).

Appellant is contending on appeal that the evidence does not support the trial court's finding that she committed domestic abuse because there is no evidence that she inflicted fear of imminent physical harm, bodily injury, or assault upon appellee. It is true that appellee never testified at the hearing that he was afraid. However, there was sufficient circumstantial evidence produced at the hearing to support a finding of domestic abuse by appellant.

Appellee called the police after hearing the shots. The events occurred at night on appellee's front porch. The parties were involved in an ongoing dispute about their child. Appellee also refused to open his door until the police arrived. All of these facts support the reasonable inference that appellee was placed in fear for his safety by appellant's actions.

In support of her argument that the trial court's decision should be reversed, appellant cites our decision in *Claver v. Wilbur*, 102 Ark. App. 53, 280 S.W.3d 570 (2008). In that case, we reversed the trial court's entry of an order of protection based upon a lack of evidence that the alleged victim was either harmed or placed in fear of harm. That case is distinguishable from the one at bar, because in *Claver* there was no evidence, either direct or circumstantial, that the alleged victim was either harmed or placed in fear of harm. In the case at bar, the testimony regarding appellee's actions at the time of the incident support a finding that appellant's actions placed appellee in fear of imminent physical harm, bodily injury, or assault.

Appellant also takes issue with the trial court's statement at the hearing that "any rational person would be fearful under those circumstances," and argues that the statement is an indication that the trial court made an assumption that appellee was placed in fear. Because there was sufficient evidence, albeit circumstantial in nature, produced at the hearing to support a finding that appellee was placed in fear of imminent harm, we are not left with a definite and firm conviction that the trial court made a mistake by finding that appellant committed domestic abuse and entering the order of protection. Accordingly, the decision of the trial court is affirmed.

Affirmed.

ROBBINS and MARSHALL, JJ., agree.