

Commonwealth Of Kentucky

Court of Appeals

NO. 2003-CA-001708-MR

RICHARD JORDAN

APPELLANT

v. APPEAL FROM JEFFERSON FAMILY COURT
HONORABLE KATHLEEN VOOR MONTANO, JUDGE
ACTION NO. 03-D-502110

STEFANIE JORDAN

APPELLEE

OPINION
AFFIRMING

** ** * * * * *

BEFORE: MINTON, SCHRODER, AND TAYLOR, JUDGES.

TAYLOR, JUDGE: Richard Jordan brings this appeal from a July 16, 2003, order of the Jefferson Family Court. We affirm.

On July 5, 2003, appellee filed a domestic violence petition in the Jefferson Family Court. Therein, appellee specifically alleged:

The parties were married for seven years and [were] divorced in January. The parties have three children in common. The pet[itioner] states that when she got back from her vacation she found that her car was

damaged. The pet[itioner] states that on July Fourth the resp[ondent] smacked his mother and spit in her face while the parties children were there. The resp[ondent]'s mother dropped the children off at a neighbors house. The pet[itioner]'s friend had to pick up the children from the nei[gh]bors home. The neighbor said that the resp[ondent] had all his guns out and to leave with the children. The neighbor called the pet[itioner]'s friend and told them that the resp[ondent] was after the pet[itioner]'s friend because she had picked up the children. The pet[itioner] states that the resp[ondent] was suppose to go to a 30 day program at Timbrooke and only stayed three days and checked himself out.

Following a hearing, the family court entered a domestic violence order prohibiting appellant from being within 1000 feet of appellee or of her residence. This appeal follows.

Appellant contends the circuit court erred by entering a domestic violence order against him. Specifically, appellant contends neither the petition nor the evidence established "that an act of domestic violence occurred . . . or that such an act may occur." We disagree.

Kentucky Revised Statutes (KRS) 403.720 defines domestic violence and abuse as:

[P]hysical injury, serious physical injury, 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

Under the above statute, domestic violence and abuse occurs when a family member inflicts fear of imminent physical injury.

In the case at hand, the petition specifically alleged appellee's car had been "damaged"; appellant had hit his mother and spit in her face in front of his children; appellant had firearms in his possession; and appellant had recently discontinued a drug treatment program. Additionally, appellee testified that appellant had entered a substance abuse center because of alcoholism and cocaine abuse, but unilaterally left the center. Appellee stated that her truck had been spray painted and all four tires had been slashed. Appellee indicated she was afraid of appellant and was not currently residing in her home.

Appellant admitted to hitting his mother and spitting in her face in front of his children. He denied vandalizing appellee's vehicle. He admitted he owned ten firearms and had "turned in" only six of those firearms. He also admitted to recently discharging himself from the substance abuse center. The record indicates appellant left the substance abuse center on July 4, 2003, and appellee filed the domestic violence petition one day later, July 5, 2003.

Considering appellant's erratic behavior, appellant's domestic violence directed at his own mother, his possession of firearms, and appellee's vandalized vehicle, we must conclude

there exists substantial evidence upon which to conclude that appellee was in fear of imminent physical injury. In short, we think the allegations of the petition coupled with appellee's testimony concerning these allegations were sufficient to support the issuance of the domestic violence order.¹ Hence, we are of the opinion the circuit court did not commit reversible error by entering the domestic violence order against appellant.

For the foregoing reasons, the order of the Jefferson Family Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

Grant M. Helman
SMITH & HELMAN
Louisville, Kentucky

BRIEF FOR APPELLEE:

Kimberly Withers Daleure
DeCAMILLIS LAW OFFICE
Louisville, Kentucky

¹ As we view the allegations contained in the petition coupled with the evidence adduced at the hearing as sufficient, we do not reach the issue of whether the circuit court erred by considering allegations and evidence thereupon not contained in the petition.