

Commonwealth Of Kentucky
Court of Appeals

NO. 2004-CA-002509-DG

TOMMY SOUTHARD

APPELLANT

ON DISCRETIONARY REVIEW FROM HARDIN CIRCUIT COURT
v. HONORABLE KELLY MARK EASTON, JUDGE
ACTION NO. 04-XX-00014

BREANNA RENFRO

APPELLEE

OPINION
VACATING AND REMANDING

** ** * * * * *

BEFORE: COMBS, CHIEF JUDGE; DYCHE AND HENRY, JUDGES.

COMBS, CHIEF JUDGE: Tommy Southard appeals from an order of the Hardin Circuit Court affirming the re-issuance of a domestic violence order ("DVO") obtained against him in Hardin District Court by Breanna Renfro, the mother of Southard's minor child. Southard argues that the original DVO had been wrongfully entered in 2001. He also argues that the original order was subsequently amended and extended improperly since the district court failed to give him notice and an opportunity to be heard and failed to appoint him a guardian *ad litem*. Because the appeal from district court was untimely, the circuit court

lacked jurisdiction. Therefore, we vacate the order erroneously entered by the circuit court and remand with directions that it dismiss the appeal.

In June 2001, Breanna Renfro was still a minor when her father, Donald Renfro, filed a domestic violence petition against Southard. The petition detailed two separate assaults against Breanna, who was the mother of a five-month-old daughter by Southard. The Hardin District Court held a hearing on the petition and entered domestic violence orders prohibiting Southard from coming within 500 feet of Renfro, Breanna, and the baby for a period of three years.

In September 2001, Breanna's father filed a motion to amend the orders. Renfro stated that Southard no longer posed a threat since he had been incarcerated and was receiving proper medication. Following a hearing, the orders were amended to permit Breanna and her daughter to visit Southard at the jail. The amended orders were set to expire on June 25, 2004. Southard raised no objection.

On May 18, 2004, Renfro filed a motion to amend the orders just before they were due to expire. Breanna and her father were present at the hearing held June 1, 2004. Breanna did not allege any further claims of domestic violence against her or her child, but she explained to the court that Southard's release from prison was imminent and that she feared any contact

with him. Following the hearing, the district court ordered that the original orders be extended for an additional period of three years.

When Southard received copies of the amended orders, he filed a motion to alter, amend, or vacate, which was denied by the Hardin District Court on June 17, 2004. On August 31, 2004, Southard appealed to the Hardin Circuit Court. By orders entered November 9, 2004, and December 7, 2004, the Hardin Circuit Court affirmed the district court's decision to extend the orders of protection. On March 21, 2005, this Court granted Southard's motion for discretionary review.

Southard argues that the district court erred by extending the original domestic violence orders without giving him proper notice and an opportunity to be heard and without appointing a guardian *ad litem* for him. However, it appears that Southard failed to appeal entry of the extended order within the 30-day time period set forth in CR¹ 73.02(1)(a), which is applicable to district court appeals through the provisions of CR 72.02(3). Consequently, the appeal to the circuit court was untimely. Nevertheless, even if we were to address the merits of the argument, we would find no error.

Although Southard contends that he never received notice of Breanna's motions to extend the orders, the clerk's

¹ Kentucky Rules of Civil Procedure.

notation indicates that copies of the motions (complete with information regarding the date and time of the scheduled hearing) were mailed to him at Eastern Kentucky Correctional Complex by regular mail. During the June 1 hearing, the district court specifically inquired as to whether Southard had been provided proper notice. The clerk responded affirmatively. Thus, the record indicates that Southard received proper notice and an opportunity to be heard on the motions. He made no attempt at that point either to respond or to seek timely appointment of a guardian *ad litem*.

Southard also argues that the district court erred by extending the original domestic violence order with respect to his young daughter since the petition as filed in 2001 did not allege that she had been the victim of domestic violence and abuse. This argument, too, must fail.

KRS 403.750 requires the court to issue a domestic violence order if, following a hearing, it finds that domestic violence and abuse have occurred and may occur again. The court's factual determination is not confined solely to the contents of the domestic violence petition but incorporates the testimony evidence presented at the hearing. Southard was provided notice and was afforded a full evidentiary hearing in 2001.

Based upon the record before us, we must conclude that the court was persuaded by a preponderance of the evidence that Southard's daughter was the victim of domestic violence and abuse. Southard did not object when the 2001 orders were entered prohibiting any contact with Breanna or his infant daughter. The statute does not require the district court to find any evidence of further acts of violence or abuse in order to justify the extension of the original orders. Thus, we cannot say that the district court abused its discretion by extending the orders in this case. However, as noted at the outset of our review of the merits of this case, this appeal was not timely filed, and the order erroneously entered by the circuit court must be vacated.

Accordingly, we vacate the order of the circuit court and remand with directions that it dismiss the appeal.

ALL CONCUR.

BRIEF FOR APPELLANT:

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