

**Commonwealth Of Kentucky**

**Court of Appeals**

NO. 2006-CA-000520-ME

NORMAN LEE BAIRD

APPELLANT

v. APPEAL FROM UNION CIRCUIT COURT  
HONORABLE SHELIA NUNLEY-FARRIS, JUDGE  
ACTION NO. 98-D-00028

SHIRLEY D. BAIRD

APPELLEE

OPINION  
VACATING AND REMANDING

\*\* \*\* \* \* \*

BEFORE: HENRY AND WINE, JUDGES; BUCKINGHAM,<sup>1</sup> SENIOR JUDGE.

HENRY, JUDGE: Norman Lee Baird appeals, pro se, from a decision of the Union Circuit Court re-issuing a Domestic Violence Order ("DVO") against him. Upon review, we vacate and remand for a new hearing.

Norman and Shirley Baird were married and lived together for 34 years until they separated on April 29, 1997 after Norman allegedly threw Shirley against a shower wall and held a gun to her head with the threat that he would "blow her

---

<sup>1</sup>Senior Judge David C. Buckingham, sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and KRS 21.580.

brains out." Shirley subsequently left the parties' home and moved in with her mother for two months before finding an apartment in Morgantown, Kentucky. The record reflects that on April 9, 1998, a DVO was entered against Norman after he threatened to kill Shirley and all of her fellow employees at the Union County Courthouse, where she worked as a deputy circuit court clerk. The DVO expired on April 8, 2001.

Following the expiration of the DVO, Norman purportedly engaged in threatening behavior towards Shirley, including following her to work, driving around her residence, and following her when she went to visit her mother at the hospital or nursing home. Shirley also alleged that Norman flew his airplane over her residence, although she could not verify this belief. Eventually Shirley filed a petition for another DVO on December 29, 2002. Following a hearing, the Union Family Court granted Shirley's petition and entered a DVO against Norman on February 18, 2003 to remain in effect until February 17, 2006.

On February 1, 2006, Shirley filed a motion to extend the DVO for another three years. After a brief hearing conducted on February 14, 2006, the family court extended the DVO to remain in effect against Norman until February 17, 2009. This appeal followed.

On appeal, Norman raises a number of complaints relating to the issuance of the February 18, 2003 DVO. However, as he neglected to appeal from that DVO when it was originally issued, it consequently shall not be a subject of our review. Instead, we focus our attention solely upon the family court's decision to extend the application of the DVO until 2009.

"The General Assembly enacted KRS<sup>2</sup> 403.715 to 403.785 as a means to allow victims of domestic violence and abuse 'to obtain effective, short-term protection against further violence and abuse in order that their lives will be as secure and as uninterrupted as possible[.]'" Wright v. Wright, 181 S.W.3d 49, 52 (Ky.App. 2005), citing KRS 403.715(1). KRS 403.750(1) provides that a court may enter a DVO "if it finds from a preponderance of the evidence that an act or acts of domestic violence and abuse have occurred and may again occur[.]" "Domestic violence and abuse" is defined to include "physical 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[.]" KRS 403.720(1). "A DVO may restrain the adverse party from certain conduct, including contacting or communicating with the victim, committing further acts of domestic violence and abuse, and disposing of or

---

<sup>2</sup> Kentucky Revised Statutes.

damaging any of the parties' property." Kingrey v. Whitlow, 150 S.W.3d 67, 69 (Ky.App. 2004), citing KRS 403.750(1)(a)-(c).

KRS 403.750(2) specifically allows for the reissuance of a DVO. It reads as follows:

Any order entered pursuant to this section shall be effective for a period of time, fixed by the court, not to exceed three (3) years and may be reissued upon expiration for an additional period of up to three (3) years. The number of times an order may be reissued shall not be limited. With respect to whether an order should be reissued, any party may present to the court testimony relating to the importance of the fact that acts of domestic violence or abuse have not occurred during the pendency of the order.

KRS 403.270(2). We have interpreted KRS 403.750(2) as giving courts the "authority to reissue DVOs even in the absence of additional acts of domestic violence and abuse during the prior period." Kingrey, 150 S.W.3d at 70.

As we further held in Kingrey, supra: "If a DVO has been effective in giving protection to a victim of domestic violence and abuse, then the district court should not be required to reject a request to extend the effective period of the DVO simply because no additional acts have occurred." Id. "In other words, the fact that a DVO has been effective in preventing acts of domestic violence and abuse is not a reason to require the court to remove the protection that had previously been afforded to the victim. Rather, it is merely a

factor for the court to consider when faced with a request to reissue the DVO." Id.

With this said, however, we are somewhat troubled by the brevity of the reissuance hearing conducted by the family court. From our review of that hearing, it appears that the only ground given by Shirley for the reissuance of the DVO was that her life had been "much more peaceful" over the past three years. While this was undoubtedly true and an important consideration in the family court's determination, we are hesitant to conclude that this ground - standing alone - is sufficient to support renewal of a DVO.

In reaching this decision, we are particularly persuaded by Judge Knopf's concurring opinion in Kingrey, supra. As noted by Judge Knopf: "It is important to remember that a person subject to a DVO is placed under significant restrictions. Consequently, a DVO should not be renewed merely at the request of the petitioning party. Rather, there must be some showing of a continuing need for the DVO." Id. (Knopf, J., concurring). As further noted by Judge Knopf: "In making the decision to renew a DVO, 'the fact that acts of domestic violence or abuse have not occurred during the pendency of the order' ... is a relevant, but not a controlling factor in making such a determination." Id. (Knopf, J., concurring), citing KRS 403.750(2). Instead:

[t]he critical issue is whether the court finds that future acts of domestic violence remain a reasonable probability. There may be other conduct or circumstances, not amounting to a violation of the prior DVO, which may nonetheless be relevant to considering the continuing need for the DVO. The trial court may also consider the nature, extent and severity of the original acts of domestic violence. In short, a court considering a motion to renew a DVO may consider the totality of the facts and circumstances in finding that acts of domestic violence and abuse may again occur if the DVO is allowed to expire.

Id. at 70-71 (Knopf, J., concurring).

We have recently emphasized the "enormous significance" of DVO petitions, Wright, 181 S.W.3d at 52, and we reiterate that significance here. We are simply not convinced that the family court gave proper consideration to the restrictiveness of a DVO or all of the facts and circumstances surrounding this case before rendering its decision. Accordingly, we are compelled to vacate the reissued DVO and remand this case for a new hearing taking into full account the Kingrey and Wright opinions, including Judge Knopf's concurrence in Kingrey.

In reaching this decision, we make no conclusions as to whether the evidence will ultimately support the reissuance of a DVO. Instead, we merely wish to ensure that proper consideration is given to the matter in light of the "immense impact" DVOs ultimately have on all involved parties. We also

reiterate that, in reconsidering this matter, the family court should keep in mind that "the domestic violence statutes should be construed liberally in favor of protecting victims from domestic violence and preventing future acts of domestic violence." Barnett v. Wiley, 103 S.W.3d 17, 19 (Ky. 2003), citing KRS 500.030; see also Kingrey, 150 S.W.3d at 70, citing KRS 403.715(1).

Accordingly, the judgment of the Union Family Court is vacated, and this matter is remanded for further proceedings consistent with this opinion.

BUCKINGHAM, SENIOR JUDGE, CONCURS.

WINE, JUDGE, DISSENTS AND FILES SEPARATE OPINION.

WINE, JUDGE, DISSENTING: Respectfully, I dissent and would affirm the decision of the trial court to extend the Domestic Violence Order (DVO) until February 2009. As already cited by the parties and the majority, KRS 403.750(2) allows for the reissuance of a DVO for an unlimited number of times. A trial judge is in the unique position to see and hear the witnesses and judge their credibility and consider the entire history of the parties. Reichle v. Reichle, 719 S.W.2d 442 (Ky. 1986).

The Appellant's own brief should give pause for concern, particularly in the section labeled "CONCLUSION." He denies past abuse even though he pled guilty to two courts of

terroristic threatening. He accuses his wife of abusing the legal system and he minimizes the value of a DVO. The trial court had the opportunity to weigh these sentiments as well as the Appellee's concerns.

There is nothing in the record to suggest that her findings were clearly erroneous, or that the trial judge abused her discretion by deciding the DVO should be extended an additional three years. I would respect the decision of the trial court based upon her observations.

BRIEF FOR APPELLANT:

Norman Lee Baird, *Pro Se*  
Sturgis, Kentucky

BRIEF FOR APPELLEE:

Shirley D. Baird, *Pro Se*  
Morganfield, Kentucky