RENDERED: MAY 18, 2007; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2006-CA-001365-ME

ARTHUR MACDONALD — APPELLANT

v.

APPEAL FROM JEFFERSON FAMILY COURT
HONORABLE STEPHEN M. GEORGE, JUDGE
ACTION NO. 06-D-501507

EDGAR MACDONALD, on behalf of LEOLA MACDONALD — APPELLEE

OPINION
AFFIRMING

** ** ** ** **

BEFORE: COMBS, CHIEF JUDGE; MOORE, JUDGE; HENRY,[1] SENIOR JUDGE.

HENRY, SENIOR JUDGE: Arthur MacDonald appeals from a domestic violence order (DVO) entered by the Jefferson Circuit Court, Family Division, restraining him from any contact with his mother Leola MacDonald and her family, and ordering him to vacate his mother's house. We affirm.

[1] Senior Judge Michael L. Henry sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and KRS 21.580.

The appellant lived with his mother in her house from September 2004 through spring 2006. On May 27, 2006, the appellant's brother, Edgar MacDonald, filed a domestic violence petition against the appellant on behalf of his and the appellant's mother, Mrs. Leola MacDonald, alleging the following:

> Pet is filing on behalf of his mother Leola. The mother is 93 years old and the Resp is 58. Resp has been staying in the mother's home for 20 mos. The mother moved out of her home a few weeks ago in fear of the Resp. Today the Pet and the mother told Resp she wanted her house back. Resp went out of control. Resp has been freeloading and controlling the mother. Resp is interfering with the mother's care giving. Resp attacked the caregiver today. Resp took his arm and knocked the caregiver down. Pet states Resp is a large man. Pet states Resp does have a mental illness. Resp verbally abuses the mother. The mother sees the way Resp treats everyone and is scared that the Resp will hurt her or kill her. Pet wants EPO to keep Resp away from the mother and vacate him from the home. Pet is POA of the mother.

The domestic violence petition was signed by the appellee and Mrs. MacDonald. An emergency protection order was issued restraining the appellant from contacting Mrs. MacDonald and ordering the appellant to vacate his mother's house.

The appellee's testimony at the June 5, 2006, hearing was consistent with the allegations in the domestic violence petition. The appellee testified that his siblings and his mother had previously requested the appellant to move from Mrs. MacDonald's house and that the appellant said that he would move provided someone rented an apartment and a storage space for him. The appellee stated that in the morning on May 27, 2006, he went to his mother's house with Mrs. MacDonald, his sister, Elizabeth Ann

Glier, and his brother, Ronald MacDonald. The appellee testified that the appellant eventually joined Mrs. MacDonald and the others in the living room. Mrs. MacDonald asked the appellant to leave her house, and the appellant "went into a rage," standing over Mrs. MacDonald and speaking in a loud voice. The appellee further testified that when the appellant left the house, he hit Mrs. Glier in the shoulder area with such force that she "flew across the room."

Mrs. MacDonald testified that when she asked the appellant to leave her house, he leaned over her, his face red and his head shaking, and told her , "Don't you dare touch my things." She stated that she had never seen the appellant "in such a rage." She testified that she was afraid of the appellant and was afraid to be in the house with him. Mrs. Glier's testimony was consistent with that of Edgar MacDonald and Mrs. MacDonald. She stated that she had not seen the appellant violent before the May 27 confrontation. She also testified that the appellant yelled, "Don't touch me," even though no one was touching him. Mrs. Glier disputed the appellant's testimony that she tried to block his exiting the house and maintained that she was resting her hand on the storm door before the appellant hit her forcefully on her upper arm.

The appellant testified that he recently attended a library seminar on landlord-tenant relations and that the actions of his mother and his siblings amounted to an illegal eviction. He audiotaped the May 27 confrontation and played the tape during the hearing. The appellant testified that he did not yell at his mother and that he was

protecting himself when he physically contacted his sister. He maintained that his mother was "rehearsed" by his sister, Mrs. Glier.

After the testimony, the family court entered an order finding that an act of domestic violence or abuse occurred and may again occur. In response to a request by the appellant, the family court judge stated that the appellant's conduct on May 27 led to Mrs. MacDonald's fear of imminent physical injury and that the mother's fear was the basis of the DVO. This appeal followed.

The appellant raises two issues relating to the merits of the issuance of the DVO. He asserts that the hearing was inadequate and that the DVO is not supported by sufficient evidence.

The appellant contends that the hearing was inadequate because it deprived him of his residence and the right to carry a weapon without due process of law. The appellant does not specify how he was denied due process, other than the family court's not being persuaded by his testimony or by his theory that his actions were justified to protest his alleged unlawful eviction. The appellant was provided with a full hearing in accordance with KRS 403.740(4) and KRS 403.745. The appellant was present and represented by an attorney at the hearing. He was provided a meaningful opportunity to be heard and to cross-examine the three witnesses testifying on behalf of the appellee.

In *Wright v. Wright*, 181 S.W.3d 49, 53 (Ky.App. 2005), this court recognized the "awesome impact" of the issuance of a DVO and emphasized the requirement of a full evidentiary hearing. We have thoroughly reviewed the record,

including the entire videotaped hearing. The fact that the family court was not persuaded by the appellant's theory that he was justified in protesting an alleged unlawful eviction, but determined that an act of domestic violence occurred and may occur again, is not indicative of a denial of due process. The appellant was provided a full and fair opportunity to explain his side of the May 27 incident leading to the DVO.

The appellant asserts that the DVO is not supported by sufficient evidence. A DVO may be issued if the court finds "from a preponderance of the evidence that an act or acts of domestic violence and abuse have occurred and may again occur." KRS 403.750(1). The preponderance of the evidence standard "merely requires that the evidence believed by the fact-finder be sufficient that the defendant was more likely than not to have been a victim of domestic violence." *Commonwealth v. Anderson*, 934 S.W.2d 276, 278 (Ky. 1996). Domestic violence includes the "infliction of fear of imminent physical injury." KRS 403.720(1). Here, Mrs. MacDonald testified that she was afraid of the appellant and afraid to be in the house with him. She testified to the appellant's face being red and shaking on May 27 when he leaned over her and stated, "Don't you dare touch my things," and also testified to the appellant's causing Mrs. Glier to fall. The testimonies of both the appellee and Mrs. Glier were consistent with that of Mrs. MacDonald. Clearly, sufficient evidence supported the family court's finding that the appellant inflicted fear of imminent physical injury upon Mrs. MacDonald.

The appellant contends that the court erred in failing to find that he was a tenant and entitled to protection under the Uniform Residential Landlord and Tenant Act

(URLTA), KRS 383.500 et seq. Whether or not the URLTA was applicable to the appellant's living with his mother in her house is irrelevant to the family court's finding that an act of domestic violence occurred and may occur again. The family court was not persuaded by the appellant's testimony that he did not commit an act of domestic violence against his mother and that his siblings and mother "ganged up on him" to evict him from the mother's house. Since the family court's finding that an act of domestic violence occurred and may occur again was supported by substantial evidence, we will not disturb it. CR 52.01.

The family court judgment is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

Arthur MacDonald, *pro se*
Louisville, Kentucky

BRIEF FOR APPELLEE:

Richard L. Receveur
Louisville, Kentucky