

Commonwealth of Kentucky

Court of Appeals

NO. 2007-CA-002028-MR

HAROLD TAYLOR

APPELLANT

v. APPEAL FROM KNOX CIRCUIT COURT
HONORABLE DURENDA LUNDY LAWSON, JUDGE
ACTION NO. 07-D-00150

GLEND A TAYLOR

APPELLEE

OPINION
AFFIRMING

** ** * ** * ** *

BEFORE: LAMBERT AND TAYLOR, JUDGES; BUCKINGHAM,¹ SENIOR JUDGE.

LAMBERT, JUDGE: Harold Taylor appeals from the entry of a domestic violence order against him in Knox Circuit Court. After careful review, we affirm.

On August 19, 2007, Glenda Taylor filed a petition for a domestic violence order against Harold in the Knox Circuit Court. Glenda alleged that when their separation began Harold told her he would kill her before he would let her leave. She also testified that she had moved to Knox County from Whitley County in an attempt to get away from him and to provide herself with some protection as Harold is a police

¹ 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 Kentucky Revised Statutes (KRS) 21.580.

officer with the Williamsburg Police Department, and she felt they protect him not her. She asserts that Harold utilized the Williamsburg Police Department to “hunt her down” in Knox County, which led to the filing of this petition.

Harold denied all of Glenda’s allegations. After hearing the testimony of both parties, the trial court entered the domestic violence order against Harold. This appeal followed.

In reviewing the issuance of a domestic violence order by a trial court, we review the trial court's finding for clear error only. See CR 52 .01 and *Reichle v. Reichle*, 719 S.W.2d 442 (Ky. 1986). KRS 403.750(1) discusses court determinations of whether domestic violence has occurred in the context of a petition for an emergency protective order under KRS 403.740. The court in such a proceeding is authorized to act if, following a hearing, “it finds from a preponderance of the evidence that an act or acts of domestic violence and abuse have occurred...” KRS 403.750(1). Domestic violence and abuse is defined as “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 (emphasis added).

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). Furthermore, “[i]t has long been held that the trier of fact has the right to believe the evidence presented by one litigant in preference to another.” See *id.*, citing *King v. McMillan*, 169 S.W.2d 10 (Ky. 1943). The trier of fact may believe

any witness in whole or in part. *Webb Transfer Lines, Inc. v. Taylor*, 439 S.W.2d 88, 95 (Ky. 1968). The trier of fact may also take into consideration all the circumstances of the case, including the credibility of the witness. *Hayes v. Hayes*, 357 S.W.2d 863, 866 (Ky. 1962).

Having weighed the evidence in this case, the trial court concluded that Glenda established that she was a victim of domestic violence. The trial court's factual findings were correctly based upon a preponderance of evidence standard, and the ruling was not clearly erroneous.

Accordingly, we affirm the order of the Knox Circuit Court.

ALL CONCUR.

BRIEF FOR APPELLANT:

Paul K. Croley, II
Williamsburg, Kentucky

BRIEF FOR APPELLEE:

Mary-Ann Smyth
Corbin, Kentucky