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NOT TO BE PUBLISHED

**Commonwealth of Kentucky**  
**Court of Appeals**

NO. 2009-CA-002025-ME

TIMOTHY SCOTT STATTS

APPELLANT

v. APPEAL FROM JEFFERSON FAMILY COURT  
HONORABLE ANN O'MALLEY SHAKE, JUDGE  
ACTION NO. 09-D-503152

KIMBALL LIVESAY STATTS

APPELLEE

OPINION  
AFFIRMING

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BEFORE: COMBS, KELLER, AND LAMBERT, JUDGES.

KELLER, JUDGE: Timothy Scott Statts (Statts) appeals from the family court's issuance of an emergency protective order (EPO) and domestic violence order (DVO). On appeal, Statts argues that the evidence presented to the court was not sufficient to support the DVO. Kimball Livesay Statts (Livesay) argues to the contrary. Having reviewed the record, we affirm.

## FACTS

Statts and Livesay were married from October 2003 to April 2007.

By the time the incidents described herein took place, the parties' marriage had been dissolved. However, the parties were in an ongoing dispute regarding the interpretation of their settlement agreement. That dispute was apparently resolved by the family court in favor of Statts. Livesay's appeal of that court's decision is currently pending before another panel of this Court.<sup>1</sup>

On September 19, 2009, the parties separately attended the University of Kentucky/University of Louisville (UK/U of L) football game. According to Livesay's domestic violence petition, the following took place:

At halftime as I was exiting the ramp, I saw Tim standing at the end of [the] ramp. I heard Tim state "that's her" to two unknown females. I continued walking. The two unknown females began cursing me and asking what my problem was. When I stopped and turned around, both females were in my face. They continued to scream. They stated if I did not leave Tim alone and stop the case that they would "fuck" me up. Tim and I have a financial settlement case still pending in Family Court. A stranger came over and asked if I was okay and if I needed security. As that happened, one female left. When I said I did, Tim came over and told the other female to leave me alone and pulled her away. As Tim led the female away, he stated something along the lines of we'll take care of her later. I went to the bathroom. When I exited the bathroom, Tim was pacing in front of the ramp of [sic] where my seats were located. The two females were approximately 10 feet away. When they saw me, they began cursing me and making obscene hand gestures. A male friend came over to me and Tim took the females and left. During the time of our divorce, he shoved me several times when I tried to leave the home. From the

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<sup>1</sup> *Kimball Livesay v. Timothy Scott Statts*, 2009-CA-001250-MR.

time we separated until we divorced (approx [sic] a year), he followed me. I am in fear of him and I want him to have no contact with me.

Based on the petition, the court issued an EPO requiring Statts to refrain from any further acts or threats of abuse, to refrain from contacting Livesay, and to stay at least 1,000 feet away from her. The court conducted a hearing on October 5, 2009, and, following that hearing issued a domestic violence order (DVO) requiring Statts to refrain from any further acts or threats of abuse and to refrain from contacting or communicating with Livesay for a period of three years. The DVO also requires Statts to refrain from purchasing or possessing any firearms while the order is in effect.

Statts argues on appeal that the testimony at the hearing does not support the court's order; therefore, we summarize that testimony in detail below.

#### 1. Livesay

At the beginning of the hearing, the court read Livesay's petition into the record and Livesay verified that its contents were accurate and true. The court then asked Livesay if she had anything to add to her petition. She said that the primary reason she was seeking protection was because the parties did not "get along" during the divorce. According to Livesay, while the parties were going through their divorce, Statts screamed at her, followed her, and called her often, leaving hostile messages if she did not answer. On one occasion, Statts followed Livesay to a friend's house and tried to break into the house. During this time

period, the couple occasionally shoved each other but Statts never struck Livesay and Livesay never filed any charges against Statts.

During the summer two years prior to this incident, Livesay stayed with Statts and took care of him while he recovered from surgery. She was not afraid of Statts initially; however, the last night Livesay stayed with him, Statts became angry, shouted, and threw things. Thereafter, Livesay took Statts to physician appointments when he could not find someone else, but she no longer stayed with him. After Statts recovered, he and Livesay did not have any contact, other than court appearances, until the September 19, 2009, UK/U of L football game.

Because the couple had not had any contact for more than two years, Livesay was “very alarmed that this came out of the blue.” As to the incident in question, Livesay testified that she was afraid because she heard Statts point her out to the women who threatened her; Statts said they would “take care of her later;” and Statts blocked her entrance to the ramp by pacing in front of it.

## 2. Statts

Statts testified that he was at the UK/U of L football game. He and two women, Monica Vanderbrink and Lindsay Pritchard, left their seats two minutes before half time to avoid the crowd at the restroom. While they were standing along one of the exit ramps, Livesay walked past. Statts testified that he

recognized Livesay. However, he stated that he did not hear her say anything and he did not say anything to either of his companions. According to Statts, Pritchard, of her own volition, followed Livesay down the exit ramp and the two began to argue. Statts and Vanderbrink then went down the ramp and Statts pulled Pritchard away from Livesay saying, "There's no need for this. Let's go." Statts testified that he then attempted to contact another companion using his cell phone and that he was pacing near the exit ramp because he was trying to get a signal on his phone.

Statts denied that he told Vanderbrink and Pritchard that Livesay would be at the game or that they planned to confront her. He admitted that the couple had argued while going through their divorce, but he denied following Livesay or making repeated phone calls.

### 3. Pritchard

Pritchard testified that, when Livesay walked past, she said, "Oh God," when she saw Statts. She then said, "Hi," and when Statts did not respond, "Oh, fuck him." Pritchard then "flipped off" Livesay and followed her down the exit ramp. The two had a short argument before Statts and Vanderbrink intervened. Pritchard further testified that she did not threaten to hurt Livesay if she did not drop the family court case.

### 4. Vanderbrink

Vanderbrink testified that she saw Pritchard walking down the exit ramp toward Livesay. She and Statts then walked up to the two and Statts pulled Pritchard away from Livesay, saying, “Let’s walk away.”

#### 5. Carrie Bettler (Bettler)

Bettler, Livesay’s sister, testified that she accompanied Livesay to the football game. As she and Livesay were going to the concession/restroom area of the stadium, she saw Statts standing by the ramp with two to three women. Statts did not say anything to Livesay when she and Bettler passed the group. Bettler then went into the restroom. Shortly thereafter, Livesay entered the restroom and told Bettler about the confrontation with Pritchard. They then left the restroom, went to the concession stand, and returned to their seats.

Following this testimony, the family court stated that it found Livesay’s testimony to be the most convincing. Based on Livesay’s testimony, the court found that Livesay was placed in fear by Statts’s conduct in the past coupled with his conduct that day. Specifically, the court found that Statts’s behavior, in particular his pacing, amounted to a “stalking antecedent” which was threatening to Livesay. The court then entered the above referenced DVO.

#### STANDARD OF REVIEW

In reviewing a family court’s determination to issue a DVO, “the test is not whether we would have decided it differently, but whether the findings of the trial judge were clearly erroneous or that he abused his discretion.” *Cherry v. Cherry*, 634 S.W.2d 423, 425 (Ky. 1982); Kentucky Rule of Civil Procedure (CR)

52.01. We will not disturb a trial court’s findings if those findings are supported by evidence that “has sufficient probative value to induce conviction in the minds of reasonable men.” *Moore v. Asente*, 110 S.W.3d 336, 354 (Ky. 2003) (*citing Blankenship v. Lloyd Blankenship Coal Company, Inc.*, 463 S.W.2d 62, 64 (Ky. 1970)). With the preceding standard in mind, we address whether the evidence presented was sufficient to support the family court’s issuance of the DVO.

#### ANALYSIS

The purpose of Kentucky’s domestic violence and abuse statutes is “[t]o allow persons who are 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[.]” Kentucky Revised Statutes (KRS) 403.715(1). “‘Domestic violence and abuse’ means physical injury, serious physical injury, sexual abuse, assault, or the infliction of fear of imminent physical injury, serious physical injury, sexual abuse, or assault . . . .” KRS 403.720(1). Before issuing a DVO, a family court must hold a hearing and determine “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)(a).

Because a DVO can be entered only after the court finds that there is an immediate and present danger of domestic violence, at a minimum, the statute requires the following: (a) specific evidence of the nature of the abuse; (b) evidence of the approximate date of the respondent's conduct; and (c) evidence of the circumstances under which the alleged abuse occurred.

*Rankin v. Criswell*, 277 S.W.3d 621, 626 (Ky. App. 2008).

Domestic violence and abuse statutes are to be construed liberally but not unreasonably. *Barnett v. Wiley*, 103 S.W.3d 17, 19 (Ky. 2003). In reaching a balance between liberal and unreasonable construction of the statutes, the family court must take into consideration the significance its action or inaction can have on the parties involved. *Wright v. Wright*, 181 S.W.3d 49, 52 (Ky. App. 2005).

In applying the law to the facts before us, we first note that the family court found Livesay's testimony to be the most credible. We cannot disturb that finding on appeal. Next, we note that, because Livesay did not suffer any physical injury, the question before us is whether Livesay's testimony is sufficient to support the family court's finding that Statts's actions placed Livesay in fear of imminent physical injury. Statts argues that his actions on September 19, 2009, as set forth by Livesay, did not constitute domestic violence and abuse as defined by KRS 403.720(1). Furthermore, he argues that any prior actions were so distant in time as to be irrelevant.

We first address whether the history of acts of aggression in the couple's past was so distant as to be irrelevant. At the time the parties were going through their divorce, Statts stalked Livesay and verbally abused her. When Livesay stopped staying with Statts following his surgery, he again acted abusively. At the time the September 19, 2009, incident took place, the parties were engaged in litigation regarding the terms of their settlement agreement.<sup>2</sup> Past incidents of abuse occurred when the parties were either engaged in litigation or

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<sup>2</sup> We take judicial notice that the parties unsuccessfully attempted to reach a settlement of their other pending case at a pre-hearing conference on September 15, 2009.



when Livesay stopped being Statts's in-home caregiver. It was not unreasonable for the court to infer that Statts's behavior on September 19, 2009, fit within that previously established pattern. Therefore, evidence of past acts of violence was not irrelevant.

As to the September 19, 2009 incident, Livesay testified that, "out of the blue," Statts identified her to Pritchard and Vanderbrink. Pritchard and Vanderbrink then confronted her, a confrontation that was loud enough to draw the attention of at least one stranger who offered assistance. Vanderbrink moved away from Livesay and then Statts pulled Pritchard away, saying, "We'll take care of her later." When Livesay started to return to her seat, Statts was pacing in front of the entrance ramp, blocking her way. Livesay felt as if the actions by Pritchard and Vanderbrink were part of an organized attack, that Statts's statement that they would "take care of her" was a threat, and that she felt threatened by Statts's pacing.

Faced with the evidence of Statts's prior behavior and his actions on September 19, 2009, a reasonable person could conclude that Statts's actions presented a threat of imminent physical danger. While we might have found otherwise, we cannot disturb the family court's finding on appeal and therefore affirm.

## CONCLUSION

The family court's finding of domestic violence is supported by evidence of substance. The court correctly applied the law to that evidence; therefore, we affirm.

ALL CONCUR.

BRIEF FOR APPELLANT:

Melanie Straw-Boone  
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