RENDERED: NOVEMBER 10, 2011; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2010-CA-001356-ME

ANTHONY DECKARD — APPELLANT

v.

APPEAL FROM JEFFERSON FAMILY CIRCUIT COURT
HONORABLE DOLLY W. BERTY, JUDGE
ACTION NO. 10-D-501701

JANET WESTON — APPELLEE

OPINION
REVERSING

** ** ** ** **

BEFORE: TAYLOR, CHIEF JUDGE; ACREE AND VANMETER, JUDGES.

ACREE, JUDGE: The question on appeal is whether the Jefferson Family Court's issuance of a domestic violence order (DVO) against Anthony Deckard was supported by substantial evidence. Finding the evidence did not establish that the type of family relationship contemplated by Kentucky Revised Statute (KRS) 403.720 existed between the petitioner and the respondent, we reverse.

I. Facts and procedure

On June 3, 2010, Janet Weston filed a petition in the Jefferson Family Court seeking a DVO against her half-brother, Deckard. In her petition, she recounted a June 2, 2010 encounter with Deckard as the basis for the DVO. This exchange occurred at a local hospital where the parties' mother was undergoing open-heart surgery. The altercation began when Weston attempted to leave the hospital with the only hospital-issued pager which would inform the family of their mother's surgical status. Deckard objected to the pager remaining with Weston and threatened "to slap the f[***] out of [her]" if she insisted on taking it with her.[1] Weston also stated in her petition that she was afraid of Deckard and that he had previously threatened to "put a bullet in [her] head" and to kill her son.

The family court conducted a hearing on June 15, 2010. Weston reaffirmed the allegations she had raised in the petition. Deckard admitted that he no longer had an agreeable relationship with Weston. While he admitted that he had threatened to slap Weston, Deckard denied that a DVO was warranted. It is agreed by all that Weston and Deckard have minimal contact with one another and do not live in the same household.

II. Standard of review

[1] Deckard protests that the expletive used was not "f***" but "s***." We agree with the family court's finding that this distinction is inconsequential.

In reviewing the grant of a petition for a DVO, the standard of review is not whether the appellate court would have reached a different outcome, but whether the findings of the trial court were clearly erroneous. *Caudill v. Caudill*, 318 S.W.3d 112, 114 (Ky. App. 2010) (citing *Cherry v. Cherry*, 634 S.W.2d 423, 425 (Ky. 1982)). Findings made by the trial court are not clearly erroneous if they are supported by substantial evidence. *Moore v. Asente,* 110 S.W.3d 336, 354 (Ky. 2003). "'Substantial evidence' is '[e]vidence that a reasonable mind would accept as adequate to support a conclusion.'" *Id.*

III. Analysis

Domestic violence 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(1). To qualify as domestic violence, then, the act of violence must occur between family members; otherwise, the victim may not secure a DVO. A family member, for purposes of a DVO analysis, "means a spouse, including a former spouse, a grandparent, a parent, a child, a stepchild, or any other person living in the same household as a child if the child is the alleged victim[.]" KRS 403.720(2).

The undisputed evidence at trial is that Deckard and Weston are half-siblings who did not reside together. Weston therefore failed to demonstrate that she suffered violence at the hands of a family member as defined by KRS 403.720.

Therefore, entry of the DVO as to Deckard was not supported by substantial evidence.[2] We reverse.

ALL CONCUR.

BRIEF FOR APPELLANT:

Kyle A. Burden
Louisville, Kentucky

NO BRIEF FOR APPELLEE.

[2] Deckard could have successfully argued before the family court that Weston lacked standing to bring a DVO petition against him. Because Deckard never raised the matter, however, we are not permitted to reverse for want of standing. *Harrison v. Leach,* 323 S.W.3d 702, 705 (Ky. 2010).