

RENDERED: JANUARY 14, 2011; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2010-CA-000974-ME

CHAD ALAN COOREMAN

APPELLANT

v. APPEAL FROM HENDERSON CIRCUIT COURT
HONORABLE SHEILA N. FARRIS, JUDGE
ACTION NOS. 2010-D-00026 & 2010-D-00026-001

KATIE RENEE COOREMAN

APPELLEE

OPINION
AFFIRMING

** ** * * * * *

BEFORE: NICKELL AND VANMETER, JUDGES; SHAKE,¹ SENIOR JUDGE.

VANMETER, JUDGE: Chad Alan Cooreman appeals from a Domestic Violence Order (“DVO”) issued against him by the Henderson Family Court. For the following reasons, we affirm.

¹ Senior Judge Ann O’Malley Shake sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and Kentucky Revised Statute (KRS) 21.580.

Chad and Katie Cooreman were married in Kentucky on August 1, 2009, and thereafter moved to Minnesota, where they were living when the events occurred which gave rise to this action. On March 9, 2010, Katie filed a domestic violence petition in Henderson County, Kentucky, alleging that on February 11, 2010, Chad threatened to cut her with a piece of glass and, on the following day, pushed her down and would not allow her to leave the house. Katie claimed that when she escaped from the house early the next morning, Chad chased her down the street. Kate had a friend pick her up and she remained in Minnesota for a week, when her parents picked her up and brought her back to Kentucky. Katie further claimed that she was afraid of Chad and what he might do.

At a hearing on the matter, Chad, through counsel, made a special appearance to argue that the Henderson Family Court lacked personal jurisdiction over Chad since he lived in Minnesota and the alleged events occurred in Minnesota. Ultimately, the court issued a DVO against Chad. This appeal followed.

Chad argues the trial court erred by issuing the DVO because (1) it lacked personal jurisdiction over him and (2) the “safe harbor” provision of KRS 403.725 does not apply. We agree that the trial court lacked personal jurisdiction over Chad, but affirm the issuance of the DVO under KRS 403.725.

In Kentucky, a three-pronged test is employed to determine personal jurisdiction. *Spencer v. Spencer*, 191 S.W.3d 14 (Ky.App. 2006). First, we must

determine whether the defendant purposefully availed himself of the privilege of acting within, or causing a consequence, in Kentucky. *Id.* at 16. Second, we consider whether the cause of action arose from activities that occurred in Kentucky. *Id.* Third, connections to the state must exist so as to make jurisdiction reasonable. *Id.* In summary, jurisdiction will only lie where all three prongs are satisfied. *Id.* at 16-17.

Applying the three-prong test to the present case, we conclude that the trial court lacked personal jurisdiction over Chad. Chad did not purposefully avail himself of acting within, or causing a consequence, in Kentucky; the cause of action did not arise from activities that occurred in Kentucky; and Chad does not have any connections to Kentucky that would make jurisdiction reasonable.

However, under KRS 403.725(1), a provision of Kentucky's domestic violence statute, a Kentucky court may issue a protective order against an individual over whom the court does not have personal jurisdiction. *Spencer*, 191 S.W.3d at 19. KRS 403.725(1) provides that “[a]ny family member or member of an unmarried couple who is a resident of this state *or has fled to this state to escape domestic violence and abuse* may file a verified petition in the District Court of the county in which he resides.” (emphasis added).

In *Spencer*, this court applied KRS 403.725 to uphold a protective order in a factual situation similar to that presented herein. In that instance, a wife residing in Oklahoma with her husband moved to Kentucky the day after her husband traveled

to Las Vegas on a trip. Upon moving to Kentucky, the wife filed a domestic violence petition in Kentucky and the circuit court issued a protective order.

On appeal, this court noted that when the respondent has no minimum contacts in Kentucky, the court must balance the due process rights of the nonresident respondent against the Commonwealth's interest in protecting victims of domestic violence. *Id.* at 17 (citing *Barnett v. Wiley*, 103 S.W.3d 17, 19 (Ky. 2003) (“the domestic violence statutes should be construed liberally in favor of protecting victims from domestic violence and preventing future acts of domestic violence”)). In reaching the proper balance, this court distinguished between a prohibitory order that serves to protect the victim of domestic violence and an affirmative order that requires a respondent to undertake action. *Spencer*, 191 S.W.3d at 17 (citing *Shah v. Shah*, 184 N.J. 125, 875 A.2d 931 (2005) (an order that only prohibits acts of domestic violence by a respondent over whom no personal jurisdiction exists is permissible)). This court held that to the extent the trial court's order prohibited the husband from breaking the law in Kentucky by approaching the wife, it comported with due process. *Spencer*, 191 S.W.3d at 19.

In the present case, Chad attempts to distinguish *Spencer* on the basis that in that case, the wife's leaving Oklahoma at the first opportunity to do so, and filing a domestic violence petition within one day of arriving in Kentucky, demonstrates that she “fled” domestic abuse, whereas Katie's actions do not. He emphasizes that Katie waited a week to leave Minnesota after the alleged abuse occurred and waited approximately one month before filing the domestic violence petition in

Kentucky. He argues that Katie's delayed action does not support a finding that she "fled" Minnesota so as to justify issuance of the DVO under KRS 403.725; rather, the evidence shows that she left Minnesota to return to her parents' home and then decided to seek a DVO.

However, the determination as to whether Katie "fled" Minnesota under these circumstances is a factual finding to be made by the trial court and its findings "shall not be set aside unless clearly erroneous." *Gosney v. Glenn*, 163 S.W.3d 894, 898 (Ky.App. 2005). A factual finding is not clearly erroneous if supported by substantial evidence. *Id.* (citations omitted). Furthermore, "due regard shall be given to the opportunity of the trial court to judge the credibility of the witnesses as fact-finder, the trial court is in the best position to determine the credibility of witnesses." CR² 52.01. *See also Uninsured Employers' Fund v. Garland*, 805 S.W.2d 116, 118 (Ky. 1991) ("It is within the province of the fact-finder to determine the credibility of witnesses and the weight to be given the evidence.") (citation omitted).

Here, we are unable to say that the evidence did not support a finding that Katie "fled" Minnesota to escape from domestic violence and abuse. Furthermore, Chad has provided no authority establishing that the timeframe in which Katie left Minnesota and filed the DVO is controlling on the issue of whether she "fled" Minnesota. Thus, despite the fact that the trial court lacked personal jurisdiction

² Kentucky Rules of Civil Procedure.

over Chad, the court's issuance of the DVO was proper under KRS 403.725(1) and comported with due process under *Spencer*.

The order of the Henderson Family Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

Gregory D. Simms
Louisville, Kentucky

BRIEF FOR APPELLEE:

No appellee brief