

RENDERED: FEBRUARY 11, 2011; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2010-CA-001119-ME

LAWRENCE R. VERAX

APPELLANT

v. APPEAL FROM KENTON FAMILY COURT
HONORABLE CHRISTOPHER J. MEHLING, JUDGE
ACTION NO. 10-D-00251

SAMANTHA ELISE BRONSON

APPELLEE

OPINION
AFFIRMING

** ** * * * * *

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

ACREE, JUDGE: In this case we must determine whether substantial evidence supports a domestic violence order (“DVO”) entered after an evidentiary hearing by the Kenton Circuit Court against the appellant, Lawrence Verax. After a careful review, we affirm.

Facts and Procedure

In early 2010, Verax and appellee Samantha Bronson lived together as an unmarried couple. About the beginning of May 2010, Bronson and Verax ended their relationship. Verax promptly moved out of the apartment he shared with Bronson. At that time, Bronson was pregnant with Verax's child.

On May 5, 2010, Verax contacted Bronson in order to retrieve a hammer and a screw driver he had left behind in the apartment. Bronson met Verax in the apartment complex parking lot to return the tools. While there, the parties discussed their relationship and an argument ensued. During the argument, Verax snatched a cell phone belonging to him from Bronson's hands and returned to his car to leave the parking lot. Bronson stepped in front of the car before Verax moved the vehicle. Bronson contends she was simply walking around the car toward the driver's side either to get the phone back from Verax or to copy the telephone numbers she had saved in the phone. Verax's version differs. He states that Bronson stopped in front of his car and pressed her shins tight against the car's front bumper in an attempt to prevent him from leaving the parking lot.

Verax had parked on a slight incline with the front of the car pointed downhill. He testified that he had one foot on the clutch and the other foot on the brake. Verax claimed that he did not want an altercation, nor did he want to get trapped in the apartment complex parking lot, so he let up slightly on the brake and allowed the car to roll forward a couple of inches while Bronson was in front of the

car. Bronson testified that she thought Verax was angry and trying to run her over. When the car moved, Bronson ran to the driver's side of the car, yelled obscenities at Verax, and threw a pop bottle at Verax through the open window. Verax then left the parking lot.

On May 5, 2010, Bronson filed a petition for a DVO in Kenton Circuit Court. On June 2, 2010, the circuit court held an evidentiary hearing, during which both Verax and Bronson testified. The circuit court concluded that Verax's use of his car against Bronson constituted an act of domestic violence. As a result, the circuit court entered a DVO restraining Verax for one year. This appeal followed. Verax contends that there is insufficient evidence to support the circuit court's conclusion that Verax committed an act of domestic violence. We disagree.

Standard of Review

This Court will not set aside the circuit court's finding of domestic violence unless it is clearly erroneous. *Caudill v. Caudill*, 318 S.W.3d 112, 114-15 (Ky. App. 2010); Kentucky Rule(s) of Civil Procedure (CR) 52.01. A factual finding is not clearly erroneous if it is supported by substantial evidence. *Moore v. Asente*, 110 S.W.3d 336, 354 (Ky. 2003). Substantial evidence is evidence of "sufficient probative value [as] to induce conviction" in the mind of a reasonable person. *Id.* With these standards in mind, we examine whether the testimony provided at the evidentiary hearing was sufficient to justify entry of a DVO.

Analysis

A court may enter a DVO following an evidentiary hearing “if it finds from a preponderance of the evidence that an act or acts of domestic violence and abuse have occurred and may occur again[.]” Kentucky Revised Statute(s) (KRS) 403.750(1). The preponderance of the evidence standard is satisfied when sufficient evidence establishes that the supposed victim “was more likely than not to have been a victim of domestic violence.” *Commonwealth v. Anderson*, 934 S.W.2d 276, 278 (Ky. 1996). KRS 403.720(1) defines domestic violence and abuse 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.”

There is no evidence that Bronson suffered a physical injury. Consequently, the resolution of this matter turns on whether substantial evidence exists to support the circuit court’s conclusion that Verax inflicted upon Bronson a fear of imminent physical injury. Bronson testified that, while she was in front of Verax’s car, he caused the car to roll forward toward her. Bronson also testified that she thought Verax was angry, and that he was trying to run her over. Bronson further claimed she was afraid of Bronson. Verax confirmed that, while Bronson was standing in front of his car with her shins tightly pressed against the car’s bumper, he intentionally allowed the car to roll forward toward Bronson. Additionally, Verax admitted he knew Bronson was pregnant and he nonetheless nudged her forward with his car.

We are cognizant of the significant impact a DVO has on the parties involved, *Wright v. Wright*, 181 S.W.3d 49, 52 (Ky. App. 2005), and although “domestic violence statutes should be construed liberally,” they should not be interpreted unreasonably. *Barnett v. Wiley*, 103 S.W.3d 17, 19 (Ky. 2003). Based on the evidence presented, it was reasonable for the circuit court to conclude that Bronson feared imminent physical injury when Verax allowed his car to roll forward when Bronson was standing in front of the car with her shins pressed against the bumper. Regardless of whether we may have decided the case differently, *Cherry v. Cherry*, 634 S.W.2d 423, 425 (Ky. 1982), we cannot say that the circuit court erred in finding that Bronson was more likely than not a victim of domestic violence.

Conclusion

The Kenton Circuit Court’s finding of domestic violence is supported by substantial evidence. We therefore affirm.

ALL CONCUR.

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