

Commonwealth of Kentucky
Court of Appeals

NO. 2010-CA-001543-ME

ROBERT BLUE

APPELLANT

v. APPEAL FROM HARDIN CIRCUIT COURT
HONORABLE PAMELA ADDINGTON, JUDGE
ACTION NO. 10-D-00180-001

DAVID J. WILBURN

APPELLEE

OPINION
AFFIRMING

** ** * ** * **

BEFORE: COMBS, THOMPSON, AND VANMETER, JUDGES.

VANMETER, JUDGE: Robert Blue appeals from a domestic violence order (“DVO”) entered against him by the Hardin Circuit Court, Family Division.

Finding no error, we affirm.

In April 2010, S.W. alleged that Robert, her stepfather, had sexually abused her. The allegation was reported to the Department of Community Based Services, an agency within the Cabinet for Family and Health Services (“Cabinet”), which,

along with the Kentucky State Police (“KSP”), began an investigation. Robert moved out of the home he shares with S.W., her mother, Tawnie Blue, and three other minor children.

Laura Neely, an employee of the Cabinet, referred S.W. to the Advocacy and Support Center (“ASC”). On April 15, 2010, S.W. underwent a psychosocial assessment at the ASC. Jennifer Rapke, an employee of the ASC, conducted the initial forensic interview, and S.W. began seeing Anne Schildknecht, a therapist with the ASC, over the next few months. During this time, Schildknecht also met with Tawnie and S.W.’s biological father David Wilburn, taking notes on the therapy sessions and the conversations with the parents.

On July 1, 2010, Wilburn filed a petition for a DVO in an effort to prevent Robert from returning to the home he shared with Tawnie and S.W. The trial court entered an emergency protection order (“EPO”), which remained in effect until July 19, 2010, at which time the trial court held a hearing. At the July 19 hearing, after David and Robert presented their evidence, the trial court entered a DVO against Robert, restraining him from any contact or communication with S.W., as well as her sister, K.W. This appeal followed.

First, Robert argues the trial court erred because it did not base its determination on the evidence, but rather on the trial judge’s personal views on Robert’s behavior. We disagree.

A trial court’s findings of fact are reviewed under a clearly erroneous standard. *Caudill v. Caudill*, 318 S.W.3d 112, 114 (Ky.App. 2010) (citation

omitted). Such findings are not clearly erroneous if they are supported by substantial evidence. *Id.* at 114-15.

A trial court may enter a DVO after 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 again occur.” KRS¹ 403.750(1). Under this standard, “the evidence must establish that the alleged victim was more likely than not to have been a victim of domestic violence.” *Rankin v. Criswell*, 277 S.W.3d 621, 624 (Ky.App. 2008) (citation omitted).

At the hearing, Rapke testified that during the forensic interview at the ASC, S.W. disclosed that Robert made sexual contact with her. Neely testified that S.W. first alleged Robert touched her in a sexual manner, and then later alleged Robert asked her to touch him in a sexual manner; however, the Cabinet found the allegations to be inconsistent and, therefore, could not substantiate S.W.’s claim. A detective with the KSP testified that the criminal investigation was ongoing, but no charges had yet been filed against Robert. Finally, Robert testified that he had not touched S.W. in a sexual manner, but during cross-examination admitted that he did appear in the nude in front of the children in the house prior to moving out.

Records from the ASC revealed that S.W. displayed sexually reactive behavior at home, and during counseling sessions spoke of Robert doing “bad things” to her. S.W. told Schildknecht she wanted Robert to move back into the home because her mother said he would not hurt her anymore. Additionally, S.W.

¹ Kentucky Revised Statutes.

used a puppet she named “Bob” to get on top of a puppet named after herself and move in a sexually explicit manner, while she cried out to Schildknecht for help.

After hearing the evidence, the trial judge remarked that she did not believe the statements made by S.W. to the Cabinet were necessarily inconsistent with one another because both instances of sexual contact could have occurred.

Furthermore, the trial judge stated she was skeptical that sufficient evidence existed to support the DVO; however, the admissions by Robert that he appeared nude in front of the children “put it over the edge.” While Robert insists that the judge’s comments were an inappropriate understanding of the evidence presented, the records from the ASC, and Rapke’s testimony regarding the forensic interview, are sufficient to support the issuance of the DVO. Accordingly, the trial court did not err by issuing a DVO against Robert.

Next, Robert contends the trial court abused its discretion by admitting records of the ASC into evidence because a proper foundation was not established. We disagree.

Pursuant to KRE² 901, a document must be authenticated before it is admitted into evidence. *Thrasher v. Durham*, 313 S.W.3d 545, 549 (Ky. 2010). Although the burden is slight, it “requires a showing ‘sufficient to support a finding that the matter in question is what its proponent claims.’” *Id.* (citing KRE 901(a); *Johnson v. Commonwealth*, 134 S.W.3d 563 (Ky. 2004)). KRE 901(b)(1) provides that testimony by a witness with knowledge is sufficient evidence to authenticate a document. Further, the authenticating witness “need not be the

² Kentucky Rules of Evidence.

custodian of the records nor the person who made them . . . [a]nyone who can testify from personal knowledge about the circumstances surrounding the making and keeping of the records can qualify as a foundation witness.” *Hunt v. Commonwealth*, 304 S.W.3d 15, 39 (Ky. 2009)

In this case, Wilburn laid the foundation for the records from the ASC through the testimony of Rapke, who was the on-site supervisor of Schildknecht and conducted the initial forensic interview of S.W. Rapke testified that the records were documents kept by ASC and consisted of Schildknecht’s notes detailing S.W.’s therapy sessions. Since Rapke possessed personal knowledge regarding the preparation and keeping of the documents, she was an appropriate witness to authenticate the records. Accordingly, the trial court did not abuse its discretion and the records were properly admitted into evidence.

The order of the Hardin Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

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BRIEF FOR APPELLEE:

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