RENDERED: JULY 25, 2014; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2014-CA-000037-ME

KYLE ALLEN STRAIN — APPELLANT

v.

APPEAL FROM BOONE FAMILY COURT
HONORABLE LINDA R. BRAMLAGE, JUDGE
ACTION NO. 13-D-00213

DANIELLE E. STRAIN AND
JUDGE LINDA RAE BRAMLAGE — APPELLEES

OPINION
AFFIRMING

** ** ** ** **

BEFORE: CLAYTON, LAMBERT, AND NICKELL, JUDGES.

NICKELL, JUDGE: Kyle Allen Strain has appealed from the Boone Family Court's December 6, 2013, entry of a Domestic Violence Order (DVO), based on a petition filed by his wife, Danielle E. Strain. We affirm.

On November 25, 2013, Danielle filed a Domestic Violence Petition seeking an Emergency Protective Order (EPO) against Kyle. The petition alleged,

inter alia, that Kyle had verbally and physically abused her in the presence of their two sons on November 23 and 24 after she informed him she wanted a divorce. Based on the allegations, the trial court issued an EPO and a domestic violence summons for Kyle and set a hearing date for December 6, 2013. After hearing testimony from Danielle, Kyle, Kyle's brother and father, and Dena Sanders—an unrelated third party who witnessed the immediate aftermath of the November 24 incident—the trial court issued a DVO against Kyle that is in effect until December 6, 2016. This appeal followed.

Kyle now challenges the sufficiency of the evidence as well as the sufficiency of the trial court's findings. He argues entry of the DVO against him was contrary to the evidence and further, that the trial court's failure to make detailed findings of fact and conclusions of law on the record renders the DVO infirm. We disagree.

Our standard of review when reviewing the entry of a DVO is whether the trial court abused its discretion, that is, "whether the trial judge's decision was arbitrary, unreasonable, unfair, or unsupported by sound legal principles." *McKinney v. McKinney,* 257 S.W.3d 130, 133 (Ky. App. 2008). We may not substitute our findings of fact for the trial court's unless they are clearly erroneous. *Bennett v. Horton,* 592 S.W.2d 460 (Ky. 1979). A factual finding is not clearly erroneous if it is supported by "substantial evidence" which has been defined as "evidence of substance and relevant consequence sufficient to induce conviction in the minds of reasonable people." *Sherfey v. Sherfey,* 74 S.W.3d 777, 782 (Ky.

App. 2002). In addition, CR[1] 52.01 instructs: "Findings of fact shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge the credibility of the witnesses."

To issue a DVO, the trial court must first conduct a hearing and find "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). The preponderance of the evidence standard is satisfied when sufficient evidence establishes that the alleged 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). Domestic violence and abuse is defined in KRS[2] 403.270 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."

Under the foregoing standards, we cannot conclude that the family court's decision to enter the DVO against Kyle was clearly erroneous, or constituted an abuse of discretion. The trial court was obviously presented with conflicting accounts of the events precipitating the filing of the instant action and was required to determine whom to believe.

> [T]he trier of fact has the right to believe the evidence presented by one litigant in preference to another. The trier of fact may believe any witness in whole or in part.

[1] Kentucky Rules of Civil Procedure.

[2] Kentucky Revised Statutes.

> The trier of fact may take into consideration all the circumstances of the case, including the credibility of the witness.

Anderson, 934 S.W.2d at 278 (internal citations omitted).

After hearing the testimony from Kyle, Danielle, Kyle's brother, Kyle's father, and Dena Sanders, the family court chose to believe Danielle's version of events, concluding that an act of domestic violence had occurred and Danielle was the victim. Further, the court heard testimony from Danielle that she was fearful of Kyle and what he was capable of doing. Thus, we are of the opinion that Danielle established by 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).

Further, we have reviewed Kyle's argument regarding the trial court's failure to make detailed findings on the record. From the tenor of his argument, it appears Kyle believes the trial court is required to make detailed oral findings prior to issuing a DVO. However, he cites no authority supportive of his position, and we believe his contention is wholly without merit. In its written order, the trial court specifically made the statutorily required finding that an act of domestic violence had occurred and may occur again. KRS 403.750(1). It is axiomatic that a trial court speaks through its written orders. *Allen v. Walter*, 534 S.W.2d 453, 455 (Ky. 1976); *Holland v. Holland*, 290 S.W.3d 671, 675 (Ky. App. 2009). The order was statutorily sufficient. Therefore, the family court's issuance of the DVO was not clearly erroneous.

For the foregoing reasons, the judgment of the Boone Family Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:	BRIEF FOR APPELLEE:
Carl E. Knochelmann Jr. Covington, Kentucky	No brief filed.