

Commonwealth of Kentucky

Court of Appeals

NO. 2014-CA-000588-ME

EMANUEL WELLS

APPELLANT

APPEAL FROM JEFFERSON CIRCUIT COURT
FAMILY COURT DIVISION

v.

HONORABLE JERRY J. BOWLES, JUDGE
ACTION NO. 01-D-502081

STEPHANIE PATILLO

APPELLEE

OPINION
AFFIRMING

** ** * * * * *

BEFORE: DIXON, J. LAMBERT, AND TAYLOR, JUDGES.

TAYLOR, JUDGE: Emanuel Wells brings this appeal from a March 6, 2014, Domestic Violence Order of the Jefferson Circuit Court, Family Court Division, finding that Emanuel committed an act of domestic violence against Stephanie Patillo. We affirm.

Emanuel Wells and Stephanie Patillo were never married but had one child in common. On February 24, 2014, Stephanie filed a petition for an

emergency protective order (EPO) and for a domestic violence order (DVO). She alleged that Emanuel had inflicted fear of imminent physical injury and/or serious physical injury upon her. The family court granted the EPO. A hearing was conducted on March 6, 2014, pursuant to Kentucky Revised Statutes (KRS) 403.740(4). Following the hearing, an order was entered finding that Emanuel had committed an act/acts of domestic violence against Patillo, and the family court entered a DVO against Emanuel. This appeal follows.

Emanuel contends the family court erred by granting Stephanie's motion for a DVO against him. Emanuel specifically alleges that there was insufficient evidence to support a finding that he committed an act of domestic violence against Stephanie.

Domestic violence is governed by KRS Chapter 403, which provides that the trial court may enter a DVO "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."

[KRS 403.720\(1\)](#). "Domestic violence and abuse" is defined as:

[P]hysical 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[.]¹

[KRS 403.720\(1\)](#). And, "[t]he preponderance of the evidence standard is met when sufficient evidence establishes that the alleged victim 'was more likely than not to

¹ Kentucky Revised Statutes (KRS) 403.720 defines "[m]ember[s] of an unmarried couple" as "each member of an unmarried couple which allegedly has a child in common, any children of that couple, or a member of an unmarried couple who are living together or have formerly lived together."

have been a victim of domestic violence.”” [Baird v. Baird, 234 S.W.3d 385, 387 \(Ky. App. 2007\)](#) (quoting [Commonwealth v. Anderson, 934 S.W.2d 276, 278 \(Ky. 1996\)](#)).

Our review of a trial court's decision to grant or deny a DVO “is not whether we would have decided it differently, but whether the court's findings were clearly erroneous or that it abused its discretion.” [Gomez v. Gomez, 254 S.W.3d 838, 842 \(Ky. App. 2008\)](#). Because the trial court is in the best position to judge the credibility of the evidence, we will not substitute our opinion for that of the trial court with regard to the weight given to certain evidence, including the testimony of witnesses. [CR 52.01; B.C. v. B.T., 182 S.W.3d 213 \(Ky. App. 2005\)](#).

In the case *sub judice*, Stephanie’s petition was read into the record at the hearing:

Emanuel and I have one child in common. On February 23, 2014, Emanuel called me. He said he wanted his daughter to come to his house. I told him no. Emanuel insulted me. He called me out of my name. Emanuel said he was going to hit me in my mouth. He said he was going to “f*** me up” when he saw me. Later that day the police knocked on the door. Emanuel sent the police to my house and he was sitting across the street. My father came outside to speak to the police. The police said I could keep my daughter since it was my weekend. Emanuel and the police drove away. Emanuel called my daughter’s phone. He left a message on her phone. He said if my father has something to say then he could come outside and say it to him since he was still there. I do not know what he will do to me. I do not want him to harm me. I want him to stay away.

Upon questioning by the court and opposing counsel, Stephanie testified she felt threatened by Wells and that she was fearful that Wells would harm her.

At the hearing, the only evidence before the family court was the testimony of the parties. The court stated that it viewed Stephanie's testimony more credible and found accordingly. The credibility of a witnesses' testimony is within the sole discretion of the circuit court as fact-finder. Here, Stephanie's testimony constituted sufficient evidence to support the family court's finding of domestic violence. Consequently, we cannot conclude that the court erred by entering the DVO against Emanuel.

For the foregoing reasons, the order of the Jefferson Circuit Court, Family Court Division, is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

NO BRIEF FOR APPELLEE.

Ryan N. Pogue
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