RENDERED: AUGUST 7, 2015; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2014-CA-001206-ME

WILLIAM ANGELL — APPELLANT

v.

APPEAL FROM JEFFERSON CIRCUIT COURT
FAMILY COURT DIVISION
HONORABLE JOAN L. BYER, JUDGE
ACTION NO. 14-D-501694

CAROLINE AVENT — APPELLEE

OPINION
AFFIRMING

** ** ** ** **

BEFORE: MAZE, NICKELL, AND TAYLOR, JUDGES.

TAYLOR, JUDGE: William Angell brings this appeal from a July 10, 2014, Domestic Violence Order of the Jefferson Circuit Court, Family Court Division. We affirm.

William Angell and Caroline Avent became acquainted through an online dating service. They met in person for the first time in late April 2014, and Avent ended the relationship with Angell on June 29, 2014.

On July 3, 2014, Avent filed a petition for a domestic violence order (DVO) alleging various acts of domestic violence that occurring during their relationship. The family court granted an emergency protective order (EPO) on July 3, 2014, and scheduled a hearing on the DVO pursuant to Kentucky Revised Statutes (KRS) 403.740. Following the hearing, the family court found that Angell had committed an act or acts of domestic violence and abuse and that same may again occur. A DVO was entered on July 10, 2014. This appeal follows.

To begin, this Court's review of a decision by a family court to grant a DVO the issue "is not whether we would have decided it differently, but whether the findings . . . were clearly erroneous or that it abused its discretion." *Guenther v. Guenther*, 379 S.W.3d 796, 802 (Ky. App. 2012) (citing *Cherry v. Cherry*, 634 S.W.2d 423 (Ky. 1982)); CR 52.01; *Reichle v. Reichle*, 719 S.W.2d 442 (Ky. 1986). And, if supported by substantial evidence findings of fact are not clearly erroneous. *Guenther*, 379 S.W.3d at 802 (citing *Moore v. Assente*, 110 S.W.3d 336 (Ky. 2003). Substantial evidence is evidence that has sufficient probative value to permit reasonable minds to accept the factual determination as adequate. *Id.*

Angell contends that the family court erred by granting Avent's petition for a DVO. Angell specifically asserts that Avent did not have standing to file the petition for a DVO as he and Avent were not family members or members of an unmarried couple.

KRS 403.725 provides that a "family member" or a "member of an unmarried couple" has standing to file a petition for a DVO. It is undisputed that Angell and Avent are not family members under KRS 402.720(2), as they were never married. Thus, the issue is whether Angell and Avent are members of an unmarried couple. The term "member of an unmarried couple" is defined in KRS 403.720(4), which provides:

> "Member of an unmarried couple" means 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.

At the evidentiary hearing, Avent testified that she and Angell had lived together for approximately one month. Based upon Avent's testimony, the family court made a finding that the two had formerly lived together. As issues of weight and credibility of witness testimony are plainly within the province of the court as fact-finder, the finding that Avent and Angell lived together is not clearly erroneous. *See Moore v. Asente*, 110 S.W.3d 336 (Ky. 2003). Consequently, the circuit court did not err by concluding that Avent and Angell were members of an unmarried couple, thus conferring standing upon Avent to file the DVO petition.

Angell also contends that the evidence was insufficient to support a finding that he committed an act or acts of domestic violence and abuse that may again occur. We disagree.

An act of domestic violence and abuse is defined 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[.]" KRS 403.720(1). Following a hearing, a family court may grant a petition for 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 403.750(1). The preponderance of the evidence standard is satisfied where the evidence establishes that the alleged victim was more likely than not to have been a victim of domestic violence and abuse. *Caudill v. Caudill,* 318 S.W.3d 112 (Ky.App. 2010); *Guenther,* 379 S.W.3d 796.

In this case, the circuit court heard testimony from both parties. Avent stated that she was fearful Angell would harm her. Avent particularly described one occasion when Angell came to her office after closing and "banged on the glass" for approximately an hour. Angell waited outside the office for nearly three hours despite police being called. Avent also testified that Angell told her "in a perfect world I'd [Advent would] be locked in his closet." Avent also described how Angell would frequently drive by her home and office. Avent believed Angell was following her and somehow tracking her location with a GPS device. Avent also further testified that she believed Angell had a gun and she was afraid of what Angell would do.

Based upon a totality of the evidence presented to the family court, we believe evidence was introduced at the hearing sufficient for reasonable minds to believe that Angell inflicted the fear of imminent physical injury upon Avent. Consequently, we cannot say the family court's findings of fact were clearly

erroneous or that the court abused its discretion in concluding that Angell committed act(s) of domestic violence and abuse against Avent and that such act(s) may again occur.

For the foregoing reasons, the Domestic Violence Order of the Jefferson Circuit Court, Family Court Division, is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

Phillipe W. Rich
Louisville, Kentucky

NO BRIEF FOR APPELLEE.