

Commonwealth of Kentucky
Court of Appeals

NO. 2015-CA-000544-ME

JOHN COSBY

APPELLANT

v. APPEAL FROM MCCRACKEN CIRCUIT COURT
HONORABLE CYNTHIA E. SANDERSON, JUDGE
ACTION NO. 14-D-00219 AND 14-D-00219-001

ALICIA SPRINGFIELD

APPELLEE

OPINION
AFFIRMING

** ** * * * * *

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

J. LAMBERT, JUDGE: John Cosby appeals from the McCracken Circuit Court's March 4, 2015, order denying his motion to alter, amend, or vacate the Domestic Violence Order (DVO) entered on December 10, 2014. Finding no error by the trial court, we affirm.

Alicia Springfield and Cosby had a relationship that resulted in the birth of a child, K.C. The parties never married, and Cosby was convicted of sexually assaulting Ms. Springfield's oldest child, A.B., and is incarcerated at Northpoint Training Center. Since his incarceration for the sexual abuse of her child, Ms. Springfield and Cosby continued to contact each other via letters sent in the mail. In September 2014, Cosby sent Ms. Springfield several letters in which he threatened to do anything possible to see his child, K.C., and made numerous other sexually explicit and harassing statements. Cosby also expressed in one of the letters that he was not scared of an EPO (Emergency Protective Order) or DVO, because he was already incarcerated.

On November 25, 2014, Ms. Springfield filed for a DVO, alleging that Cosby had sent her the threatening letters and that despite her requests, he continued to contact her at the address where his victim still resided. Ms. Springfield also claimed that Cosby had a friend contact her through social media. Ms. Springfield expressed concern for A.B. and also for her other daughter, if Cosby continued to have contact with them. She filed the DVO on behalf of herself and all the children residing in her household.

The trial court held a hearing on December 10, 2014. Cosby testified via telephone from Northpoint Training Center. He reported that Ms. Springfield had been in contact with him while he was incarcerated and that she had sent him money within the last year. Cosby expressed that he wanted to be able to contact their daughter and that in her prior letters Ms. Springfield had stated that she would

read any letters he sent to K.C. He denied contacting the victim. He further stated that his mother, who was present at the hearing, had copies of the letters Ms. Springfield had sent to him while he was incarcerated.

Ms. Springfield testified that she had corresponded with Cosby, but that in September 2014, the letters became threatening in nature and that she was scared of Cosby's statements that he would do anything to see K.C. She also stated that she was worried about A.B. and the effect any contact with Cosby would have on her.

Cosby's mother, Sylvia Oliver, also testified. Ms. Oliver testified that she had seen K.C. for her birthday, but had not seen her since. She also stated that she had some letters between the parties in her possession. In response to Ms. Oliver's testimony, Ms. Springfield stated on the record that she did not want Cosby or his family involved in her life, was not asking for support, and did not want them around her children.

The trial court stated that with regard to any visitation, Cosby would have to file a paternity petition to determine paternity of K.C. in order to ultimately obtain any visitation for him or his family. The trial court orally entered the DVO and memorialized its oral ruling in its written order entered December 10, 2014.

Cosby filed a motion to alter, amend, or vacate the petition, arguing that at the time Ms. Springfield filed the petition for the DVO, she was not a resident of the Commonwealth of Kentucky, and thus the trial court had no jurisdiction to enter the DVO. The trial court held a hearing on the motion to alter,

amend, or vacate on March 4, 2015. Cosby again participated by telephone. He stated that he did not believe the trial court had jurisdiction to enter the DVO, because Ms. Springfield was not a resident of the state any longer.

Ms. Springfield testified that she had since moved to Illinois, but that at the time she filed the petition, she was still residing in McCracken County and was a Kentucky resident. She stated that she was instructed to file the DVO in the state where the activities happened, which was Kentucky. The trial court questioned Ms. Springfield about whether or not she had fled to Kentucky, and Ms. Springfield stated that she had been back and forth from her address here and her new address in Illinois. At the conclusion of the testimony, the trial court denied Cosby's motion to alter, amend, or vacate. This appeal now follows.

On appeal, Cosby argues that the trial court was without jurisdiction to enter the DVO because Ms. Springfield is not a resident of Kentucky. In support of this, he cites to Kentucky Revised Statutes (KRS) 452.510 and *Fritsch v. Caudill*, 146 S.W.3d 926 (Ky. 2004).

We initially note that KRS 452.510 states, “[u]nless otherwise provided by law, the venue of criminal prosecutions and penal actions is in the county or city in which the offense was committed.” Furthermore, in *Fritsch*, the issue was venue, not jurisdiction, which Cosby argues was improper here. Thus, Cosby's citations do not support his arguments and are not persuasive.

The standard of review for an entry of a DVO is well-settled in this Commonwealth.

Prior to entry of a DVO, the court must 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 the alleged victim was more likely than not to have been a victim of domestic violence. *Baird v. Baird*, 234 S.W.3d 385, 387 (Ky. App. 2007). The definition of domestic violence and abuse, as expressed in KRS 403.720(1), includes “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....” The standard of review for factual determinations is whether the family court's finding of domestic violence was clearly erroneous. CR 3 52.01; *Reichle v. Reichle*, 719 S.W.2d 442, 444 (Ky. 1986). Findings are not clearly erroneous if they are supported by substantial evidence. *Moore v. Asente*, 110 S.W.3d 336, 354 (Ky. 2003). “[I]n reviewing the decision of a trial court the test is not whether we would have decided it differently, but whether the findings of the trial judge were clearly erroneous or that he abused his discretion.” *Cherry v. Cherry*, 634 S.W.2d 423, 425 (Ky. 1982) (citation omitted). Abuse of discretion occurs when a court's decision is unreasonable, unfair, arbitrary or capricious. *Kuprion v. Fitzgerald*, 888 S.W.2d 679, 684 (Ky. 1994) (citations omitted).

Caudill v. Caudill, 318 S.W.3d 112, 114-15 (Ky. Ct. App. 2010). In the instant case, Cosby was incarcerated for sexually abusing Ms. Springfield's child, and had threatened whatever harm was necessary to see his child, who resided with the victim and Ms. Springfield. Thus, the trial court properly found that an act of domestic violence had occurred, and there was no abuse of discretion.

Furthermore, Ms. Springfield resided in McCracken County, Kentucky, at the time of the acts of sexual abuse and at the time she received the

threatening letters from Cosby. Ms. Springfield still resided in Kentucky at the time she filed for the DVO. Thus, the trial court properly denied Cosby's motion to alter, amend, or vacate the DVO, and the trial court did not abuse its discretion in entering the March 4, 2015, order.

Finding no error, we affirm the DVO entered on December 10, 2014, and the McCracken Circuit Court's March 4, 2015, order denying Cosby's motion to alter, amend, or vacate.

ALL CONCUR.

BRIEF FOR APPELLANT:

NO BRIEF FOR APPELLEE

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