

**Commonwealth of Kentucky**

**Court of Appeals**

NO. 2015-CA-001083-ME

WILLIAM S. SULLIVAN

APPELLANT

v. APPEAL FROM GALLATIN CIRCUIT COURT  
HON. LINDA R. BRAMLAGE, JUDGE  
CASE NO. 15-D-00011-001

LEIGH ANN SULLIVAN

APPELLEE

OPINION  
AFFIRMING

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BEFORE: ACREE, CHIEF JUDGE; KRAMER AND D. LAMBERT, JUDGES.

KRAMER, JUDGE: William S. Sullivan appeals from a Domestic Violence Order (DVO) filed against him by his ex-wife, Leigh Ann Sullivan issued by the Gallatin Circuit Court. He argues that the burden of proof in DVO actions should be “clear and convincing evidence,” and not the current “by a preponderance of the

evidence” standard under KRS<sup>1</sup> 403.740(1). He also argues that he was denied due process under the Fourteenth Amendment of the United States Constitution. After a careful review of the applicable law and facts, we affirm.

### **Relevant Facts**

On June 8, 2015, Leigh Ann filed a petition for a DVO against her ex-husband, William. On June 18, 2015, the matter came before the Gallatin Circuit Court for a hearing. Leigh Ann was the only person who testified, and no other evidence was presented. Leigh Ann testified that on or about March 22, 2015, William entered her residence after the two had separated. William came into the bedroom yelling about her leaving him. Leigh Ann pushed William out the bedroom door. William then began smacking her and hitting her and told Leigh Ann that he would kill her if he saw her with another man. Then, he told her that he was going to “get what was his” and raped her.

Leigh Ann testified that since the time she filed the petition for a DVO against William, William had driven past her house several times. She also testified that while she was driving William had driven his car towards her, crossing the center line, and that she had to drive “almost against the guard rail” in order to miss him. Leigh Ann stated that, on another occasion, William “trashed” her house and duct-taped a hatchet to her makeup vanity. She also testified that she had been repeatedly abused throughout the 31 years that the two had known each other, and that he had also been abusive towards their children; furthermore,

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<sup>1</sup> Kentucky Revised Statute.

William threatened to kill her several times, one time telling her that he was not going to stop until she was dead.

The Gallatin Circuit Court granted a DVO against William. This appeal followed.

### **Analysis<sup>2</sup>**

Kentucky Revised Statute 403.720(1) defines domestic violence as a “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.” An appellate court reviews the trial court’s issuance of a DVO to determine “whether the court’s findings were clearly erroneous or [] it abused its discretion.” *Holt v. Holt*, 458 S.W.3d 806, 812 (Ky. App. 2015) (quoting [\*Gomez v. Gomez\*, 254 S.W.3d 838, 842 \(Ky. App. 2008\)](#)). Furthermore, “[t]he trial court may render 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 occur again.” *Id.* (quoting *Gomez*, 254 S.W.3d at 843). “The preponderance of the evidence standard is met when sufficient evidence establishes that the alleged victim ‘was more likely than not to have been a victim of domestic violence.’” *Valentine v. Horan*, 275 S.W.3d 737, 739 (Ky.

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<sup>2</sup> We note that Leigh Ann has chosen not to file an appellee brief in this case. Kentucky Rule of Civil Procedure (CR) 76.12(8)(c) “provides the range of penalties that may be levied against an appellee for failing to file a timely brief.” *St. Joseph Catholic Orphan Soc’y v. Edwards*, 449 S.W.3d 727, 732 (Ky. 2014). At our discretion, we may “(i) accept the appellant’s statement of the facts and issues as correct; (ii) reverse the judgment if appellant’s brief reasonably appears to sustain such action; or (iii) regard the appellee’s failure as a confession of error and reverse the judgment without considering the merits of the case.” CR 76.12(8)(c). In this instance, we will accept as true William’s “Statement of the Case” as it appears on page six of his brief.

App. 2008) (quoting *Commonwealth v. Anderson*, 934 S.W.2d 276, 278 (Ky. 1996)). William argues that the burden of proof in DVO actions should be “clear and convincing evidence,” and not the current “by a preponderance of the evidence” standard under KRS 403.740(1).

We are, however, precluded from reviewing this argument because William did not make it before the family court. An appellate court may not rule on issues which were not raised before the trial court. *Fischer v. Fischer*, 348 S.W.3d 582, 588 (Ky. 2011). Accordingly, this issue is not properly before this Court.

William also vaguely argues that he was denied due process under the Fourteenth Amendment to the United States Constitution. The entirety of the basis of this argument is two sentences, to wit: “Appellant in this action was denied any meaningful opportunity to be heard. Thus, he has, to date, been denied his constitutional right to due process of law.”

In *Holt*, 458 S.W.3d at 813, this Court stated as follows:

KRS 403.750(1) permits a court to enter a DVO if, following the hearing, the court “finds from a preponderance of the evidence that an act or acts of domestic violence and abuse have occurred and may again occur...” With respect to the hearing requirement, we have held that “[d]ue process requires, at the minimum, that each party be given a meaningful opportunity to be heard.” *Wright v. Wright*, 181 S.W.3d 49, 53 (Ky. App. 2005). In turn, a party has a meaningful opportunity to be heard where the trial court allows each party to present evidence and give sworn testimony before making a decision. *Id.*

Both James and Tammy were represented by counsel. Each gave sworn testimony under oath before the Bullitt Family Court. Moreover, each party was allowed an opportunity for cross-examination. We cannot find anywhere in the record where Tammy was denied an opportunity to present evidence before the Bullitt Family Court rendered its decision.

Although William's argument is --at best--vague, this Court nonetheless reviewed the hearing and record in this matter to evaluate this claim. Upon review, the Court notes that William was: On notice of the allegations against him; represented by counsel; given a meaningful opportunity to be heard; given an opportunity to present witnesses on his behalf (although William's attorney stated on the record that he did not wish to call witnesses as to the matter); and given an opportunity to question Leigh Ann under oath. The record in no way supports his allegation that he was denied due process. Accordingly, this claim lacks all merit.

For the reasons as stated, the DVO issued by the Gallatin Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

NO BRIEF FILED FOR APPELLEE

Stephen P. Huddleston  
Warsaw, Kentucky