

Commonwealth of Kentucky
Court of Appeals

NO. 2016-CA-001556-ME

BRUCE CLINTON JACKSON

APPELLANT

v. APPEAL FROM FAYETTE CIRCUIT COURT
HONORABLE KATHY STEIN, JUDGE
ACTION NO. 16-D-00884

ANITA KATHERINE JACKSON

APPELLEE

OPINION
AFFIRMING

** ** * ** * ** *

BEFORE: KRAMER, CHIEF JUDGE; CLAYTON AND THOMPSON,
JUDGES.

CLAYTON, JUDGE: Bruce Jackson appeals the Fayette Circuit Court's entry of a Domestic Violence Order against him. The order in part prohibits contact between Bruce and his wife, Anita Jackson, with whom a divorce proceeding was pending. Bruce raises three issues: (1) the trial court improperly relied on the impact of hearsay statements; (2) the trial court improperly allowed hearsay statements of

Bruce's minor children and Bruce's physician; and (3) the trial court lacked a sufficient factual basis that acts of domestic violence had occurred or may occur again. We hold that all three alleged errors fail. Thus, we affirm the DVO.

BACKGROUND

Bruce and Anita married in 1994 and had three children during the marriage. Two of the children were still minors during the DVO proceedings. At the DVO hearing, only Anita testified. She stated the parties' marriage included some altercations between Bruce and Anita. Generally, Bruce was a good man when he was doing well. However, he would have fits where he would scream and throw things. He would also grab and shake Anita, grab her by the throat, and shove her into walls.

Anita testified about many specific examples of violence. In 1998, Bruce was charged with domestic violence against Anita. During the incident, Bruce threw things and eventually pushed his oldest son to the ground, bloodying and scarring his son's fingers. Two years later, Bruce pushed Anita up against her car when she attempted to leave her office and tried to take the keys out of her hand. A police officer was nearby and intervened and arrested Bruce. Bruce eventually served time as his probation that he was then serving was revoked. In 2013 Bruce suffered a heart attack and stroke. While in a hospital, he pulled out his IVs and leads and attacked Anita, throwing her against the wall and holding her by her throat. In the months that followed this 2013 incident, Bruce would state that he wanted to hurt Anita, he would stare her down, and he would go on

rampages around the house. Bruce also hurt two of his children by grabbing one child where the child's leg had been fractured and shoving his daughter down on the stairs. As a result of that incident, Anita acquired for herself and the children an EPO against Bruce. Anita stopped visiting Bruce in 2014.

Anita did not want to divorce Bruce. She asked him multiple times to go to a doctor as his anger fits occurred more regularly. Bruce refused. As Bruce was disabled following his heart attack and stroke, Anita acted as Bruce's guardian between 2013 and 2015. She was then removed and later held in contempt for misappropriating Bruce's social security funds. The guardianship was terminated entirely in 2016.

Bruce, through his new guardian, filed the divorce action against Anita in July of 2015. That action was still ongoing when the petition for an EPO was filed in August of 2016. The petition was based on an incident wherein Anita came home and discovered one of her windows was partially opened. After she called the police, an officer discovered the mulch outside the window was disturbed and speculated that the actions were meant to send a message. "This made me feel that Bruce was making good on his threats to me that when he got out he would find me, make me pay and kill me." (Petition, p. 1). The petition also noted the many past incidents of domestic violence. "Bruce has a long and extensive history of assaulting me and our children." *Id.*

The day after the window incident, Anita claimed:

Bruce drove to several of my families' homes in southern Indiana. There was no rational purpose whatsoever for Bruce to drive to the home of any of my family members. It made me feel like he was sending a message to me and my family that he could get to any of us. My family has notified Bruce's attorneys that they wish no contact from him.

(Petition, p.2).

Anita noted her continual fear for herself and her daughter. "I believe Bruce will act on his threats against me. I'm afraid and I believe we are in danger." *Id.*

The trial court granted the EPO and held a hearing where substantially the same testimony was given by Anita. Anita also presented evidence that Bruce had moved to an apartment near her residence. Bruce presented no evidence and offered no witnesses. The trial court then issued a DVO, finding Anita established by a preponderance of the evidence that an act of domestic violence and abuse had occurred and may again occur. The order restrained Bruce from contacting Anita or their two minor children, excepting only that Bruce may text and electronically communicate with the children. It further ordered that Bruce should remain at least 500 feet away from Anita and the minor children at all times, and that Bruce should remain at least 500 feet away from Anita's residence and the minor children's school. It ordered that Bruce should not possess, purchase, or attempt to possess or obtain a firearm. And it granted Anita temporary custody of the minor children.

Bruce timely appealed this order. Our analysis of his appellate issues is as follows.

ANALYSIS

Our Court recently outlined the standard of review for a DVO's issuance:

Appellate review of a trial court's decision regarding issuance of 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*, 254 S.W.3d at 842. Findings of fact will not be set aside unless they are clearly erroneous, that is, unsupported by substantial evidence. Kentucky Rules of Civil Procedure (CR) 52.01; *Moore v. Asente*, 110 S.W.3d 336 (Ky. 2003).

The 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. KRS 403.750(1). 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." *Gomez*, 254 S.W.3d at 842 (quoting *Commonwealth v. Anderson*, 934 S.W.2d 276, 278 (Ky. 1996)).

Domestic violence is defined 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." KRS 403.720(1).

Holt v. Holt, 458 S.W.3d 806, 812 (Ky. App. 2015).

Bruce first claims the DVO is based on erroneous facts regarding Anita's fears of imminent domestic violence. Specifically, Bruce claims Anita's

fears are based solely on hearsay statements told to her by physicians, her children, or a police officer. Bruce relies on *Fraley v. Rice-Fraley*, 313 S.W.3d 635 (Ky. App. 2010) to support his argument. We find *Fraley* inapplicable.

In *Fraley* a wife sought a DVO against her husband. At a hearing on the petition, the wife testified that it was her marriage counselor that convinced her that she should be afraid of her husband. *Id.* at 640. The wife “never alleged that Dale had acted violently toward her in the past, had injured her, or had threatened violence in any way.” *Id.* A panel of this Court found two errors with the marriage counselor’s statements. First, being afraid of one’s husband due to the marriage counselor’s statements did not meet the definition of domestic violence under the statute. Second, considering the impact of the counselor’s hearsay statements upon the wife was error.

We have no such correlative error here. Anita detailed numerous actual incidents of domestic violence perpetrated by Bruce against her and her children over the past two decades. Anita’s fear of Bruce was based on Bruce’s own actions and the reasonable inferences drawn from the disturbed mulch, the opened window, and Bruce’s trips to Anita’s relatives’ houses. Anita was afraid of Bruce not because someone told her to be afraid of Bruce, but, rather, because Bruce had instilled fear in her over the years.

Furthermore, the history of domestic violence coupled with these recent actions created an imminent danger. *See* KRS 503.010(3) (“Imminent” means impending danger, and, in the context of domestic violence and abuse as

defined by KRS 403.720, belief that danger is imminent can be inferred from a past pattern of repeated serious abuse.”). At the very least we cannot say that the trial court lacked substantial evidence to make such a factual finding, nor can we say that the trial court abused its discretion by issuing a DVO under these facts.

Any hearsay statements that were admitted, whether erroneously or not, were not the basis of a finding of domestic violence. Substantial evidence existed from non-hearsay statements that Anita had fear of imminent domestic violence by Bruce. Accordingly, the trial court did not err.

Bruce next argues the trial court erred by allowing hearsay statements of the minor children, Bruce’s physician, and a police officer to be admitted. Anita ostensibly concedes that many hearsay statements were admitted, but she argues that the statements were either harmless, did not form the basis for the domestic violence finding, or were properly admitted because Bruce opened the door. We agree that the statements did not form the basis of the domestic violence finding. Anita presented ample evidence to support the finding. We have thoroughly reviewed the lengthy hearing and find that even if all hearsay statements were removed from consideration, substantial evidence existed to support that Anita proved her case by a preponderance of the evidence.

We liken the instant case to *Holt* where a panel of this Court found no error in issuing a DVO when a victim testified that he had been hit, stalked and harassed on previous occasions, and he “presented circumstantial evidence that Tammy unlawfully entered his home and ransacked his room.” 458 S.W.3d at 812.

“James also testified that Tammy’s prior acts of violence, angry outbursts, frequent drive-bys, and harassing communications caused him to fear that she would commit future actions of violence against him.” *Id.*

Here, Anita testified to previous acts of violence, including one act that led to Bruce having his probation revoked and multiple acts that caused physical harm to their children and Anita. Anita presented evidence that the window to her home had been opened while she was away. She also presented evidence that Bruce had moved near her residence. She testified that she feared Bruce would commit future acts of violence against her. Just as in *Holt*, this evidence was sufficient to support issuing the DVO. Thus, even if hearsay statements were erroneously admitted, the trial court had ample other evidence upon which to base its finding of domestic violence. *Gibson v. Campbell-Marletta*, 503 S.W.3d 186, 192 (Ky. App. 2016) (“However, while the statements were prejudicial, the trial court had ample other evidence to determine whether or not there were grounds to issue a DVO.”). Accordingly, no error occurred.

Finally, Bruce claims the trial court’s finding of domestic violence is based on an insufficient factual basis. We need not address this issue again, as we have held multiple times in this Opinion that the trial court committed no such error. Therefore, we AFFIRM the trial court’s Order of Protection.

KRAMER, CHIEF JUDGE, CONCURS.

THOMPSON, JUDGE, CONCURS IN RESULT ONLY.

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