RENDERED: NOVEMBER 30, 2018; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2017-CA-001504-ME

JOSEPH WOODBURY MUSK — APPELLANT

v.

APPEAL FROM PENDLETON CIRCUIT COURT
HONORABLE HEATHER FRYMAN, JUDGE
ACTION NO. 17-D-00040-001

JENNIFER LYNN MUSK — APPELLEE

OPINION
AFFIRMING

** ** ** ** **

BEFORE: JOHNSON,[1] SMALLWOOD AND THOMPSON, JUDGES.

SMALLWOOD, JUDGE: Joseph Woodbury Musk (Joseph) appeals the entry of an amended domestic violence order (ADVO) by the Pendleton Circuit Court. After a careful review, we affirm.

[1] Judge Robert G. Johnson concurred in this opinion prior to the expiration of his term of office on November 20, 2018. Release of the opinion was delayed by administrative handling.

Joseph limits his argument on appeal to the procedural aspects of the trial court's entry of the ADVO. For that reason, it is unnecessary to delve into the facts giving rise to the original domestic violence order (DVO) petition. Instead, only the procedural history is needed.

Appellant and his wife, Jennifer Lynn Musk (Appellee), initiated a divorce action in Kenton County, Kentucky in 2017; however, Jennifer resided in Pendleton County. Based on events that occurred on July 22, 2017, at her residence, Appellee filed a petition for an emergency protective order with the Pendleton Circuit Court, which was granted on July 25, 2017. On July 31, 2017, a DVO was entered by agreement with the Pendleton Circuit Court. Appellant later changed his mind and moved to vacate, amend, or alter the DVO. The trial court held a hearing on this motion on September 1, 2017. During this hearing, Appellee testified as to the events which occurred on July 22, 2017. At the conclusion of the hearing, the court found that domestic violence had occurred and entered the ADVO in accordance with that finding. Appellant requested written findings of fact and conclusions of law, which the court advised would be found on the docket sheet. The docket sheet states as follows:

> Hearing on underlying DVO – parties had previously agreed to entry of DVO – Respondent later obtained new counsel and indicated that he never agreed to the entry of the DVO.

> Testimony taken – Finding of DV by a preponderance of the evidence. The court finds that the Respondent forced his way into the home, threw a chair on the deck, implied threats of suicide and attempted to obtain a firearm from the home. The parties' children were in the home at the time. These acts are DV. Petitioner is afraid of Husband – supervised visits not less than once per week.

Subsequently, the court entered a completed Administrative Office of the Courts (AOC) Form 275.3 and a copy of the docket sheet upon which the court had handwritten its findings of fact. The court marked on the AOC Form 275.3 that "it was established, by a preponderance of the evidence that an act(s) of domestic violence and abuse . . . has occurred and may again occur." This appeal followed.

Specifically, Appellant argues that, pursuant to Kentucky Rules of Civil Procedure (CR) 52.01 and Kentucky Revised Statutes (KRS) 403.740(1), the trial court did not make sufficient written findings of fact to support the ADVO.

The intent of CR 52.01 is "to direct judges in cases tried by the court without a jury to make separate findings of fact and conclusions of law whenever they render a judgment on the merits." *Anderson v. Johnson*, 350 S.W.3d 453, 456 (Ky. 2011). This ensures meaningful review can be had if the litigant seeks appeal of the decision. *See Reichle v. Reichle*, 719 S.W.2d 442, 444 (Ky. 1986); *Elkins v. Elkins*, 359 S.W.2d 620, 622 (Ky. 1962). KRS 403.740(1) sets forth the requirements for entry of a domestic violence order. "[C]ompliance with CR 52.01

and the applicable sections of KRS Chapter 403 requires *written* findings[.]" *Keifer v. Keifer*, 354 S.W.3d 123, 126 (Ky. 2011) (emphasis original).

In his brief, Appellant supports his argument by citing to several Kentucky cases that address the required findings for family court orders: *Keifer*, 354 S.W.3d at 126 (holding "[a] bare-bone, conclusory order such as the one entered here, setting forth nothing but the final outcome, is inadequate"); *Boone v. Boone*, 463 S.W.3d 767, 769 (Ky. App. 2015) (holding that oral findings on the video record are not sufficient because it is the court's duty to render its findings in writing); *Anderson*, 350 S.W.3d at 458 (holding the trial court has a duty to "engage in at least a good faith effort at fact-finding" under CR 52.01, after the trial court had failed to set forth any findings to support its conclusions of law).

However, in *Pettingill v. Pettingill*, 480 S.W.3d 920 (Ky. 2015), the Supreme Court of Kentucky dealt with substantially similar circumstances as those herein. The *Pettingill* trial court entered a DVO against the appellant, and the findings were set forth in AOC Form 275.3 and on the court's docket sheet. *Id.* at 922. Ultimately, the Supreme Court held that "proper findings were made and recorded in the case at bar." *Id.* at 926.

Even though Appellant specifically requested written findings, it was not error for the trial court to direct Appellant to the docket sheet for its findings, as the docket sheet accurately reflected the court's fact-finding. Thereon, the court

set out the facts supporting its domestic violence determination. The AOC Form 275.3, together with the docket sheet, setting out the trial court's written findings of fact, were more than sufficient to satisfy the court's good faith duty to record fact-finding.

Accordingly, we affirm the order of the Pendleton Circuit Court.

JOHNSON, JUDGE, CONCURS.

THOMPSON, JUDGE, CONCURS IN RESULT ONLY.

BRIEF FOR APPELLANT:

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BRIEF FOR APPELLEE:

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