

RENDERED: NOVEMBER 2, 2018; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky
Court of Appeals

NO. 2017-CA-001531-ME

LYNDSEY WHITE

APPELLANT

v. APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE DOLLY W. BERRY, JUDGE
ACTION NO. 17-D-501631-001

JAMES ALLEN GRIDER

APPELLEE

OPINION
AFFIRMING

** ** * * * * *

BEFORE: COMBS, D. LAMBERT AND SMALLWOOD, JUDGES.

SMALLWOOD, JUDGE: Lyndsey White appeals from an order dismissing her petition for a domestic violence order (DVO). Finding no error, we affirm.

On May 20, 2017, Appellant filed a petition for order of protection against James Grider, her boyfriend with whom she lived. In her petition, she alleged that she and Appellee had a volatile relationship. The petition was mainly

based on events occurring the night of May 19, 2017. On that night, Appellee and his cousin took Appellant on a late-night fishing trip to Lake Cumberland and, after hearing what she described as a number of suspicious exchanges between the two, Appellant became convinced that Appellee was going to kill her. Once at the lake, Appellant ran from Appellee and his cousin, found some campers, and stayed with them while the police were called.

An emergency protective order was issued the next day and a hearing was set for May 30, 2017. On the day of the hearing, only Appellant appeared before the court. As a result, the court issued a DVO against Appellee. Later, Appellee filed a motion seeking to vacate the DVO claiming that he and counsel were present at the courthouse on the day of the hearing, but had not heard the case called. A new hearing was set without objection from Appellant.

A new hearing took place on August 22, 2017. Unfortunately, a large portion of the recorded proceeding was either not recorded or unable to be located. Appellant's testimony and part of the cross-examination of Appellant are therefore not in the record. Appellant also did not avail herself of Kentucky Rule of Civil Procedure (CR) 75.13 which allows her to prepare a narrative statement to supplement the record.

After hearing the testimony, the trial court made oral findings as to why it was denying the petition and entered a form order. At the request of

Appellant, the court entered a new written order detailing its findings as to why the DVO was denied. The order is short; therefore, we will recite it in full.

This matter was before the Court on August 22, 2017 for hearing on the Petitioner's request for a Domestic Violence Order. Upon conclusion of the hearing, the Court ruled as follows, which is here set out in typewritten form:

[The] Court finds that there may have been extensive arguing, and possible fear on Petitioner's behalf (so the court might make findings of domestic violence), the court does not find reason to believe there will be [an] act of domestic violence in the future, as the parties are no longer together and will not be, and have no ties. Petitioner had ample opportunities to leave, as she had her own residence, own car, and income. There were no witnesses called by either party and there were witnesses to some of these events that would have been helpful. DVO dismissed. (Respondent lives in Louisville and Petitioner lives in Georgetown, KY). (Emphasis in original).

This appeal followed.

Appellant makes many arguments on appeal concerning her belief that the trial court misconstrued the domestic violence statutes; however, the ultimate question for this Court is whether the court erred in finding that there was no evidence of future domestic violence, a requirement for the entry of a DVO.¹

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[.]" The preponderance of the evidence

¹ The court indicated that there might have been domestic violence, but the majority of the order and the issue on appeal concern future acts of domestic violence.

standard is satisfied when sufficient evidence establishes the alleged victim was more likely than not to have been a victim of domestic violence. 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. Findings are not clearly erroneous if they are supported by substantial evidence.

Caudill v. Caudill, 318 S.W.3d 112, 114-15 (Ky. App. 2010) (citations omitted).

“[S]ubstantial evidence” is “[e]vidence that a reasonable mind would accept as adequate to support a conclusion” and evidence that, when “taken alone or in the light of all the evidence, . . . has sufficient probative value to induce conviction in the minds of reasonable men.” Regardless of conflicting evidence, the weight of the evidence, or the fact that the reviewing court would have reached a contrary finding, “due regard shall be given to the opportunity of the trial court to judge the credibility of the witnesses” because judging the credibility of witnesses and weighing evidence are tasks within the exclusive province of the trial court. Thus, “[m]ere doubt as to the correctness of [a] finding [will] not justify [its] reversal,” and appellate courts should not disturb trial court findings that are supported by substantial evidence.

Moore v. Asente, 110 S.W.3d 336, 354 (Ky. 2003) (citations omitted).

We find that the court did not err in this case. The trial court found that there was no evidence that domestic violence may occur in the future because the parties had absolutely no ties to one another. Appellant and Appellee are no longer a couple or living together. Also, Appellant did not have to rely on

Appellee in any way because she has her own car, house, and income. Finally, both parties live approximately 70 miles apart in different cities. This shows that there is substantial evidence to support the court's decision and we find no error.

Based on the foregoing, we affirm the judgment of the circuit court.

COMBS, JUDGE, CONCURS.

LAMBERT, D., JUDGE, DISSENTS WITHOUT OPINION.

BRIEF FOR APPELLANT:

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