

RENDERED: DECEMBER 14, 2018; 10:00 A.M.  
NOT TO BE PUBLISHED

**Commonwealth of Kentucky**  
**Court of Appeals**

NO. 2017-CA-001680-ME

SETH JACOB GILFORD

APPELLANT

v. APPEAL FROM HENDERSON CIRCUIT COURT  
HONORABLE SHEILA N. FARRIS, JUDGE  
ACTION NO. 17-D-00171-001

CHRISTA DAWN GILFORD

APPELLEE

OPINION  
VACATING

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

SMALLWOOD, JUDGE: Seth Jacob Gilford (“Appellant”) appeals from a Domestic Violence Order rendered by the Henderson Circuit Court restraining him from having any contact with Christa Dawn Gilford (“Appellee”) and the parties’ two minor children. Appellant argues that the trial court erred in failing to make proper findings of fact, and in making a finding of domestic violence that was not

supported by substantial evidence. For the reasons addressed below, we VACATE the order on appeal.

On September 18, 2017, Appellee sought and obtained an Emergency Protective Order from the Henderson Circuit Court. In support of the order, Appellee alleged that on September 16, 2017, she and Appellant, to whom she is married, had a heated argument at their home centering on Appellant's refusal to participate in sleep apnea treatment which made him excessively drowsy and "out of it" during the day. According to Appellee, the argument escalated during the day resulting in Appellant poking her hard on her shoulder with his finger, ripping her keys from her hand, pushing her hand away from a car door and positioning his body in front of her so that she could not walk away. Appellee stated that she was in fear of Appellant because she "had seen his track record over the past 12 years" and she "knows when things escalate." Appellant acknowledged that there was a heated argument, but denied the argument became physical.

A hearing on the matter was conducted on September 25, 2017, where testimony was adduced from the parties as well as from Appellant's mother, Sharon Gilford, and Appellant's sister-in-law, Brandy Gilford. The parties reiterated their versions of the events, with Appellee also testifying that Appellant had previously head-butted her, bit her, punched holes in the wall, and threatened suicide by pointing a gun at his head.

At the conclusion of the hearing, the Henderson Circuit Court made a finding that there was an act of domestic violence. It rendered a Domestic Violence Order on September 25, 2017, which restrained Appellant from having any contact with Appellee or their two children except as allowed in the parties' dissolution of marriage action. The order was to remain in effect until September 24, 2018, and this appeal followed.

Appellant now argues that the Henderson Circuit Court committed reversible error when it failed to make findings of fact in support of the Domestic Violence Order, and that the evidence is not sufficient to support the order. He directs our attention to Kentucky Rules of Civil Procedure (“CR”) 52.01, which provides that in all actions tried without a jury, the court shall find the facts specifically and state separately its conclusions of law. Pointing to *Ghali v. Ghali*, 596 S.W.2d 31, 32 (Ky. App. 1980), Appellant asserts that CR 52.01 is applicable in domestic matters. Citing *Boone v. Boone*, 463 S.W.3d 767, 768-69 (Ky. App. 2015), he further argues that the Court of Appeals has specifically held that a trial court is required to make written findings of fact for all Domestic Violence Orders. Appellant notes that the only written order issued in this matter is AOC Form 275.3, wherein the trial court checked the box stating that an act of domestic violence occurred and may occur again.

We conclude that *Boone, infra*, is controlling on this issue. In *Boone*, a husband appealed the sufficiency of the evidence supporting a Domestic Violence Order. Though the trial court made oral findings on the record in support of the order in *Boone*, a panel of this Court expressly held that written findings are required in issuance of Domestic Violence Orders. Citing *Keifer v. Keifer*, 354 S.W.3d 123, 126 (Ky. 2011), which addressed the application of CR 52.01 in child custody matters, the court in *Boone* stated that “we believe that the Supreme Court’s mandate of written findings also applies to DVO cases.” *Boone*, 463 S.W.3d at 768. This conclusion was grounded on the seriousness of Domestic Violence Orders, especially in the context of dissolution and child custody proceedings where such orders may have profound consequences. *Id.* at 769.

In the matter before us, the Henderson Circuit Court did not make oral nor written findings in support of the Domestic Violence Order. While it did check a box on AOC Form 275.3 under the heading “Additional Findings” stating that a preponderance of the evidence established that an act of domestic violence had occurred, this form language is more akin to a conclusion of law than a finding of fact.

Because *Boone* holds that written findings are required in support of a Domestic Violence Order, and as no such findings were made in the matter before us, we VACATE the order on appeal. Further, as the order on appeal expired on

September 24, 2018, and prior to the issuance of this Opinion, the matter is now moot. For this reason, there is no cause for remanding it to the Henderson Circuit Court for further proceedings.

ALL CONCUR.

BRIEF FOR APPELLANT:

Allison B. Rust  
Henderson, Kentucky

BRIEF FOR APPELLEE:

Susan Montalvo-Gesser  
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