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NOT TO BE PUBLISHED

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

NO. 2017-CA-001997-ME

CHRIS EDWARD JEFFRIES

APPELLANT

v. APPEAL FROM OLDHAM FAMILY COURT  
HONORABLE DOREEN S. GOODWIN, JUDGE  
ACTION NO. 17-D-00122 AND 17-D-00122-001

HANNAH JO ELLEN MEAGHER

APPELLEE

OPINION  
AFFIRMING

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BEFORE: ACREE, NICKELL AND THOMPSON, JUDGES.

ACREE, JUDGE: Chris Jeffries appeals the Oldham Family Court's interpersonal protective order. After careful review, we affirm. Sufficient evidence supported the family court's finding of a dating relationship, and the family court did not undertake its role in a manner that deprived Jeffries of due process.

## FACTS AND PROCEDURE

Hannah Meagher filed a petition for a temporary interpersonal protective order (IPO) against Jeffries on November 13, 2017. She alleged:

- Jeffries had been her boyfriend eighteen years earlier;
- On September 24, 2017, she began receiving troubling messages from Jeffries;
- She asked Jeffries to stop contacting her and her husband;
- Jeffries professed “he would always love her”;
- Jeffries stated in a message, “I care [sic] a gun everywhere I go and I am not afraid to use it to defend myself. The problem with someone like me is I am not afraid to die.”;
- Jeffries told Meagher and her husband where he lived and left a message stating: “I live near the end of a one lane dead end road. There is one way in but two out. One is the way you got here and the other is in a bag.”

She further alleged that Jeffries continued to contact her and that a temporary IPO is “my best option to keep myself and children safe.” A temporary IPO was granted, and the family court’s additional findings included boxes the judge checked for: dating violence and abuse and stalking. The additional findings thus effectively read: “The Court having reviewed the petition and being sufficiently advised, finds that the allegations of an immediate and present danger of dating violence and abuse and stalking.” A hearing was set for November 17, 2017, to determine if a long-term IPO should be entered.

The parties appeared *pro se* at the hearing. Meagher testified that she sent a message to Jeffries in 2010, conveying her condolences upon hearing of the death of Jeffries' grandparents. Jeffries messaged Meagher several times over the following days, which resulted in Jeffries and Meagher speaking on the phone for around forty minutes regarding the messages exchanged online. At the end of their conversation, Meagher made it clear she had no intention of getting into or continuing a relationship with Jeffries, who is also married. Meagher testified that Jeffries continued to message her in an inappropriate manner. Meagher's husband also messaged Jeffries attempting to end the communications with his wife.

Jeffries contested the allegations related to the messages exchanged with Meagher. He stated Meagher reached out to him by online message on April 19, 2010, and that his response in 2017 occurred because he had just then received the message. Jeffries acknowledged he sent Meagher the messages and he did so because he wanted "her to talk to me so she would know what she put me through." He further testified:

Right before we broke up I bought a house because I thought we were going to live there together. I was looking at a car to buy her, she didn't know about that. She found a wad of money I had to buy her an engagement ring, because I thought the month before that I got her pregnant, so I was going to do the right thing. When I found out she wasn't, I still wanted to marry her.

Meagher testified she feared Jeffries would come to her house and feared for her own safety as well as that of her family.

The family court entered an order that Jeffries have no contact whatsoever with Meagher, her children, or her husband, to include by means of text, phone, Facebook, or third parties. The family court granted a three-year IPO, stating: “That Respondent [Jeffries is] restrained from committing further acts of abuse or threats of abuse, stalking, or sexual assault . . . . That the Respondent be restrained from any unauthorized contact with Petitioner/Plaintiff [Meagher] or other protected person(s) named in this Order”; and “Additional terms of this order are as set forth below.”

On November 17, 2017, the family court entered a three-year IPO identical to the November 13, 2017 temporary IPO except that it did not make a finding that an act of stalking had occurred and may occur again. The additional findings of the family court instead read: “The Court having reviewed the petition and being sufficiently advised, finds that the allegations of an immediate and present danger of dating violence and abuse.” This appeal followed.

### **STANDARD OF REVIEW**

The ruling and review of a petition for an IPO is similar to that of domestic violence protective orders. Following a hearing as provided under KRS<sup>1</sup>

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

456.040, “if a court finds by a preponderance of the evidence that dating violence and abuse, sexual assault, or stalking has occurred and may again occur, the court may issue an interpersonal protective order[.]” KRS 456.060(1).

The preponderance of the evidence standard is met when sufficient evidence establishes that the petitioner is “more likely than not” to have been a victim of dating violence and abuse, sexual assault, or stalking. *See Baird v. Baird*, 234 S.W.3d 385, 387 (Ky. App. 2007) (applying the preponderance of the evidence standard in the context of the issuance of a domestic violence order).

When we review a decision of the family court, “[t]he test is not whether the appellate court would have decided it differently, but whether the findings of the family court are clearly erroneous, whether it applied the correct law, or whether it abused its discretion.” *Coffman v. Rankin*, 260 S.W.3d 767, 770 (Ky. 2008) (quoting *B.C. v. B.T.*, 182 S.W.3d 213, 219-20 (Ky. App. 2005)).

### **ANALYSIS**

Jeffries presents three arguments on appeal: first, that dating violence and abuse cannot be found because he and Meagher were not in a relationship; second, that the family court erred in finding that dating violence and abuse occurred; and third, that he was improperly denied a meaningful opportunity to be heard and improperly denied an opportunity to cross-examine Meagher.

## 1.) **Dating Relationship**

Jeffries' first argument is that dating violence and abuse cannot be found as the parties were not in a dating relationship pursuant to KRS 456.010.

We disagree.

The statutory definition of "dating relationship" states:

(1) "Dating relationship" means a relationship between individuals who have *or have had* a relationship of a romantic or intimate nature. It does not include a casual acquaintanceship or ordinary fraternization in a business or social context. The following factors may be considered in addition to any other relevant factors in determining whether the relationship is or was of a romantic or intimate nature:

- (a) Declarations of romantic interest;
- (b) The relationship was characterized by the expectation of affection;
- (c) Attendance at social outings together as a couple;
- (d) The frequency and type of interaction between the persons, including whether the persons have been involved together over time and on a continuous basis during the course of the relationship;
- (e) The length and recency of the relationship; and
- (f) Other indications of a substantial connection that would lead a reasonable person to understand that a dating relationship existed[.]

KRS 456.010 (emphasis added).

Jeffries points us to KRS 456.010(1)(e) and argues primarily that the relationship was not recent. But this factor is merely one among many that the family court may consider in its finding that there was a dating relationship. There is ample evidence in the record to indicate such a finding under all the factors listed in KRS 456.010.

Both Meagher and Jeffries acknowledge they had a dating relationship nearly twenty years ago; their interactions since then, and of recent vintage, stem from that dating relationship. In the hearing, Jeffries testified that he kept messaging Meagher because he wanted her to know what ending their relationship put him through. We find the evidence sufficient to support the family court's finding under the statute that the parties were at one point engaged in a dating relationship.

## **2.) Dating Violence and Abuse**

Second, Jeffries argues that since he and Meagher had no physical contact, there are only two ways in which the family court could make a finding of dating violence and abuse: first, by stalking, and, second, by infliction of fear of imminent physical injury, serious physical injury, sexual abuse, or assault pursuant

to KRS 456.010(2). He contends that his conduct did not meet the statutory requirement for either ground. We disagree.<sup>2</sup>

Jeffries' conduct is consistent with the statutory definition of stalking. Under the IPO statutes, "stalking" refers to conduct prohibited under KRS 508.140 or KRS 508.150. KRS 456.010(7). Those statutes define the difference between first-degree and second-degree stalking. We analyze under the second-degree stalking statute but start with the definition of stalking.

(1) (a) To "stalk" means to engage in an intentional course of conduct:

1. Directed at a specific person or persons;
2. Which seriously alarms, annoys, intimidates, or harasses the person or persons; and
3. Which serves no legitimate purpose.

(b) The course of conduct shall be that which would cause a reasonable person to suffer substantial mental distress.

KRS 508.130(1). Second-degree stalking is defined by KRS 508.150, stating:

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<sup>2</sup> We note that in the November 13, 2017, temporary IPO, the family court made an additional finding that there was an immediate and present danger of stalking. In the November 17, 2017, three-year IPO, the family court made an additional finding only as to dating violence and abuse, defined by KRS 456.010(2) as: physical injury, serious physical injury, stalking, sexual assault, or the infliction of fear of imminent physical injury, serious physical injury, sexual abuse, or assault occurring between persons who are or have been in a dating relationship. Although stalking is listed as a separate additional finding on the three-year IPO form, we must still analyze whether Jeffries' conduct constitutes stalking because it is one potential ground for making a finding of dating violence and abuse.



(1) A person is guilty of stalking in the second degree when he intentionally:

(a) Stalks another person; and

(b) Makes an explicit or implicit threat with the intent to place that person in reasonable fear of:

1. Sexual contact as defined in KRS 510.010;
2. Physical injury; or
3. Death.

KRS 508.150(1).

Here, Jeffries continued to send messages to Meagher even though she explicitly asked him to stop. In a message to Meagher, Jeffries stated: “I care [sic] a gun everywhere I go and I am not afraid to use it to defend myself. The problem with someone like me is I am not afraid to die.” After being messaged by Meagher’s husband, Jeffries stated “I live near the end of a one lane dead end road. There is one way in but two out. One is the way you got here and the other is in a bag.” Jeffries’ conduct was directed at Meagher and her husband; it seriously alarmed, annoyed, intimidated, or harassed her; it served no legitimate purpose; and it would cause a reasonable person to suffer mental distress.

Second-degree stalking requires a defendant to make an explicit or implicit threat with the intent to place that person in reasonable fear of physical injury or death. Based on Jeffries’ statements, a reasonable person would

reasonably fear physical injury or death. Meagher testified that she fears Jeffries coming to her house and for her own safety as well as that of her family.

Jeffries' conduct meets the statutory definition of stalking and is sufficient evidence for the family court's finding that dating violence and abuse occurred between Jeffries and Meagher and could occur again.

### **3.) Opportunity to be Heard and Right to Cross-Examine**

Finally, Jeffries argues the family court violated his due process rights by not providing him a meaningful opportunity to be heard and by not allowing him to cross-examine Meagher during the IPO hearing. We disagree.

The videotape of the hearing shows Jeffries was offered a meaningful opportunity to be heard. The family court allowed Meagher to testify and then offered Jeffries the opportunity to respond. Jeffries gave a short response followed by a period of silence. The family court asked Jeffries if he had anything further in response, to which Jeffries responded he did not. Based on the record, we cannot make a finding that the family court abused its discretion and did not allow Jeffries a meaningful opportunity to be heard.

We also disagree with Jeffries' assertion that the family court improperly eliminated his right to cross-examine Meagher.<sup>3</sup> Jeffries

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<sup>3</sup> We recently analyzed the same 6<sup>th</sup> Amendment right to cross-examine argument in an unpublished opinion, *Gorbaty v. Rodriguez*, No. 2016-CA-000295-ME, 2017 WL 3669486, at \*4 (Ky. App. Aug. 25, 2017). We follow the same analysis here.

mischaracterizes his right to cross-examination as based on the Sixth Amendment, which does not apply to civil cases. *Cabinet for Health and Family Servs. v. A.G.G.*, 190 S.W.3d 338, 345 (Ky. 2006). A civil litigant’s right of confrontation and cross-examination is grounded in the Due Process Clauses of the Fifth and Fourteenth Amendments. *Id.* However, “due process is flexible and calls for such procedural protections as the particular situation demands.” *Morrissey v. Brewer*, 408 U.S. 471, 481, 92 S. Ct. 2593, 2600, 33 L. Ed. 2d 484 (1972).

Additionally, the family court is permitted to control cross-examination by the exercise of its sound discretion: “[t]he court shall exercise reasonable control over the mode and order of interrogating witnesses” and “the trial court may limit cross-examination[.]” KRE<sup>4</sup> 611(a) and (b); *Moore v. Commonwealth*, 771 S.W.2d 34 (Ky. 1988), *abrogated on other grounds by McGuire v. Commonwealth*, 885 S.W.2d 931 (Ky. 1994).

Therefore, having determined that Jeffries had a meaningful opportunity to be heard, we further find that the family court did not violate due process or abuse its discretion in limiting Jeffries’ cross-examination.

### **CONCLUSION**

For the foregoing reasons, the family court was neither clearly erroneous in its findings of a dating relationship and dating violence and abuse nor

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<sup>4</sup> Kentucky Rules of Evidence.

did it abuse its discretion in allowing Jeffries' to be heard and limiting cross-examination. Accordingly, we affirm the interpersonal protective order of the Oldham Family Court.

ALL CONCUR.

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