

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NOT TO BE PUBLISHED

Commonwealth of Kentucky
Court of Appeals

NO. 2018-CA-000978-ME

GREGORY W. AYLOR

APPELLANT

v. APPEAL FROM BOONE CIRCUIT COURT
HONORABLE LINDA R. BRAMLAGE, JUDGE
ACTION NO. 18-D-00121-001

JILL M. STULTZ AYLOR

APPELLEE

OPINION
VACATING AND REMANDING

** ** * * * * *

BEFORE: CLAYTON, CHIEF JUDGE; D. LAMBERT AND THOMPSON,
JUDGES.

CLAYTON, CHIEF JUDGE: Gregory W. Aylor appeals from the Boone Circuit Court's issuance of a Domestic Violence Order ("DVO"). Upon review, we vacate the DVO and remand for additional findings. We order, however, that the DVO shall remain effective for thirty (30) days after this opinion becomes final. The

family court shall hold an evidentiary hearing in conformity with this opinion within that time.

BACKGROUND

Gregory and Jill M. Schultz Aylor were married at the time of the incident at issue in this case. Beginning on the morning of May 19, 2018, the couple engaged in a series of arguments based primarily on the fact that Jill had spent time with co-workers the previous night. Throughout that day, Gregory also texted with his best friend, Jason Whaley, regarding such altercations. Later that evening, Jason testified that Gregory called him and told him he had his gun in his hand and that he was trying to get his children out of the house so that he could shoot Jill. Jason contacted the police, who eventually arrived at the Aylor residence to assess the situation.

Jill subsequently filed a petition for an order of protection against Gregory. The family court issued an emergency protective order in favor of Jill and held a hearing on May 30, 2018, as to whether the family court should issue a DVO. After conducting the hearing, the Boone Family Court entered a DVO on a Form AOC-275.3, which restrained Gregory from committing further acts of abuse or threats of abuse, stalking, or sexual assault, required Gregory to stay 500 feet away from Jill, and provided for supervised visitation with the couples' two

minor children. Gregory was also required to turn over all firearms. The order was to remain in effect until May 30, 2021.

Under the order's heading, "**ADDITIONAL FINDINGS**" (emphasis original), at the top of page two, the court found:

For the Petitioner against the Respondent in that it was established, by a preponderance of the evidence, that an act(s) of domestic violence and abuse, dating violence and abuse, stalking, sexual assault has occurred and may again occur[.]

While the first box was checked, the remaining boxes were left blank.

Additionally, the family court made handwritten notations on the docket sheet order entered May 30, 2018, which, while summarizing the testimony of Jason and Jill, indicated nothing regarding the family court's findings or conclusions.

Further, at the closing of the evidence at the hearing, the family court simply stated, "I'm going to make a finding that there was an act of domestic violence, just on behalf of petitioner." The family court did not discuss any further findings or conclusions. Gregory thereafter filed this appeal, arguing that the preponderance of the evidence failed to establish that an act of domestic violence or abuse occurred or may occur again.

ANALYSIS

Pursuant to Kentucky Revised Statutes (KRS) 403.740(1), following a hearing, "if a court finds by a preponderance of the evidence that domestic

violence and abuse has occurred *and may again occur*, the court may issue a domestic violence order[.]” (Emphasis added). Therefore, pursuant to the statutory language, a family court must make two separate findings – that domestic violence and abuse occurred as well as the likelihood of future domestic violence. *See Guenther v. Guenther*, 379 S.W.3d 796, 802 (Ky. App. 2012) (for the proper entry of a DVO, a trial court must determine by a preponderance of the evidence that domestic violence may occur again in addition to determining that domestic violence has already occurred).

In this case, the family court made no finding that domestic violence “may again occur.” The family court’s oral findings make no mention of whether the domestic violence and abuse may occur again, and the family court failed to make such a finding on the form Order of Protection. As previously discussed, it is incumbent upon the trial judge to make the required findings under KRS 403.740(1). “This court has cautioned that DVO proceedings must be complete and thorough due to their serious impact on families.” *Boone v. Boone*, 463 S.W.3d 767, 769 (Ky. App. 2015) (citing *Rankin v. Criswell*, 277 S.W.3d 621, 626 (Ky. App. 2008)).

Consequently, we are obliged to vacate the DVO and remand for additional specific factual findings pursuant to KRS 403.740(1) as to whether domestic violence and abuse may again occur. Recognizing the unique nature of

DVOs and the significant purposes they serve, however, it is hereby ordered that the family court's May 30, 2018 Order of Protection shall remain effective for thirty (30) days after this opinion becomes final. The family court shall hold an evidentiary hearing in conformity with this opinion within that time.

ALL CONCUR.

BRIEF FOR APPELLANT:

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BRIEF FOR APPELLEE:

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