

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

NO. 2018-CA-001392-ME

ROBERT SHARP

APPELLANT

APPEAL FROM WARREN CIRCUIT COURT  
FAMILY COURT DIVISION  
v. HONORABLE CATHERINE RICE HOLDERFIELD, JUDGE  
ACTION NO. 14-D-00163-002

HEATHER A. SHARP

APPELLEE

OPINION  
AFFIRMING

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BEFORE: CLAYTON, CHIEF JUDGE; ACREE AND TAYLOR, JUDGES.

TAYLOR, JUDGE: Robert Sharp<sup>1</sup> brings this appeal from a September 17, 2018, order of the Warren Circuit Court, Family Court Division, extending a Domestic Violence Order (DVO) for one year. We affirm.

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<sup>1</sup> In the Notice of Appeal, appellant is identified as Robert Sharp; however, throughout the circuit court record, appellant is identified as Robert Andrew Sharp, Jr.

In June 2014, Heather A. Sharp obtained a DVO against Robert after he had threatened to kill her. The DVO forbid Robert from coming within 500 feet of her. In November 2014, the trial court found Robert in contempt for, *inter alia*, purchasing a firearm. Thereafter, in December 2014, the court extended the DVO until December 2017. In November 2017, the court extended the DVO for another year. Robert did not appeal any of those decisions.

In September 2018, Heather filed a motion to extend the DVO again, stating she still feared Robert, with whom she was engaged in litigation regarding a child custody dispute. Similarly, Heather testified at the hearing that she was “a little fearful” of Robert. She also testified that Robert’s stepfather had shown up uninvited at a hotel in Tennessee where she was vacationing with her children. According to Heather, she had not discussed the trip with Robert or his stepfather but a credit card statement she disclosed in the custody litigation showed the prepaid hotel bill. Heather testified that Robert’s stepfather’s unannounced arrival caused her fear.<sup>2</sup> Heather definitively stated that she believed the DVO had kept

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<sup>2</sup> Heather A. Sharp also testified that she wanted an extension because Robert allegedly called child protective services multiple times reporting she had hit their children, but she testified on cross-examination that she had no proof that Robert made those reports. In any event, it is difficult to discern how reporting suspected child abuse constitutes domestic violence. Similarly, the fact that Robert’s stepfather served a subpoena on Heather’s mother in the child support litigation does not facially constitute domestic violence by Robert.

her physically safe and that she thought continuing it for another year would continue to keep her physically safe.

Although he previously had counsel, Robert was *pro se* at the September 2018 hearing. Robert admitted under oath that he had verbally threatened Heather prior to the initial DVO being issued but asked the court to not extend the DVO again because he had not violated its terms and its existence hampered his ability to find a job. Robert also disputed Heather's statement that she feared him, stating that Heather could not fear him because she had moved considerably closer to his residence. The court stressed that it had knowledge of the parties from its extensive dealing with the parties in all the litigation, then granted the motion to extend the DVO for a year, noting particularly that it believed it should be in place for an upcoming hearing in the child custody litigation.<sup>3</sup> The court did make some modifications to the DVO which, for example, permitted Robert and Heather to both attend extracurricular activities of their children. This appeal followed.

The only issue before us is whether the September 2018 extension of the DVO was proper. Accordingly, we will not address the sundry arguments Robert makes about the propriety of the initial DVO, the previous extensions

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<sup>3</sup> The hearing was scheduled to occur in October 2018 and the then-extant Domestic Violence Order (DVO) was not set to expire until November 2018, so there would have already been a DVO in place at the hearing.

thereto, the proceedings in the child support litigation and various other nonrelevant matters. We also note that Robert has failed to comply with Kentucky Rules of Civil Procedure (CR) 76.12(4)(c)(iv) and (v) because his statement of the case and much of his argument in his brief contain allegations unaccompanied by a citation to the record on appeal. For example, Robert does not cite to the video record of the September 2018, DVO proceedings until page twelve of his brief. Instead of striking his brief, we have elected to not address any arguments which are not properly supported with ample citations to the record on appeal.

Under Kentucky Revised Statutes (KRS) 403.740(1), a DVO may be entered only if the court “finds by a preponderance of the evidence that domestic violence and abuse has occurred and may again occur . . . .” “Domestic violence and abuse” is defined in relevant part by KRS 403.720(1) as “the infliction of fear of imminent physical injury, serious physical injury, sexual abuse . . . or assault between family members or members of an unmarried couple[.]”

KRS 403.740(4) provides that a DVO may be reissued for up to three years and “[t]he fact that an order has not been violated since its issuance may be considered by a court in hearing a request for a reissuance of the order.” In other words, “the absence of additional actions of domestic violence is merely one factor which the court may consider in deciding whether to extend a DVO.” *Cottrell v. Cottrell*, 571 S.W.3d 590, 592 (Ky. App. 2019). In determining whether to extend

a DVO, a court “may consider all facts and circumstances, including the nature, extent and severity of the original acts of domestic violence . . . .” *Id.* However, because the reissuance of a DVO has “significant consequences” for the parties, it may not be extended as a matter of course upon request; instead, “we understand the law to require some showing of a continued need for the DVO to be presented to the court, although additional acts of domestic violence need not be proven.” *Rupp v. Rupp*, 357 S.W.3d 207, 209 (Ky. App. 2011) (citation omitted).

Appellate review of a family court’s decision to issue, or extend, a DVO is limited. We do not base our ruling on whether we may have reached a different conclusion but instead review the family court’s findings under the clearly erroneous standard. *Guenther v. Guenther*, 379 S.W.3d 796, 802 (Ky. App. 2012). Accordingly, findings of fact will be upheld if supported by substantial evidence of probative value. *Id.*

Although in this case there was no evidence of physical violence, Robert verbally threatened to kill Heather in 2014. Thus, the original domestic violence was severe. Moreover, Robert violated the original DVO by buying a firearm, thereby evidencing a conscious disregard for the court’s order and heightening the potential for violence (and Heather’s reasonable apprehension

thereof).<sup>4</sup> In addition, the ongoing custody litigation between the parties was bitter, which the trial court reasonably concluded meant a DVO should remain in place. Contrary to Robert's argument, the fact that Heather was amenable to amending the DVO to permit her and Robert to both be present at school functions of their children does not inherently mean that she did not fear Robert. After all, the amended DVO still required Robert to remain at least ten feet from her at school functions and athletic events. Instead, amending the DVO was a way of permitting the children to have both parents attend functions. Finally, the only way Robert's stepfather could have known of Heather's taking the children on vacation to Tennessee was via information Robert obtained from discovery in the custody dispute. Robert's stepfather showing up unannounced and uninvited in Tennessee doubtlessly surprised and disturbed Heather. Indeed, she reported his presence to the local authorities. So even though there is no explicit indication that Robert asked his stepfather to go to Tennessee, there is a connection between his appearance and information gained from Robert. In short, the trial court was very familiar with the parties and their litigious history with each other. Based on the limited record before us, we conclude that Heather established a continued need for

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<sup>4</sup> Lest this be misunderstood, we are not saying that the record shows that Robert threatened to use the illicit firearm to harm Heather; instead, we mean only that it is logically inescapable that Robert heightened the potential for violence by being so intent on possessing a weapon that he was willing to disregard a court order forbidding such purchases.

the DVO to be extended by the family court. *See Rupp*, 357 S.W.3d at 209. And, the court's decision was supported by sufficient substantial evidence of probative value. Therefore, we must affirm.

For the foregoing reasons, the order of the Warren Circuit Court, Family Court Division, is affirmed.

ALL CONCUR.

BRIEFS FOR APPELLANT:

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BRIEF FOR APPELLEE:

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