

Commonwealth Of Kentucky

Court of Appeals

NO. 2004-CA-001465-ME

TAMMY A. SANDERS, FORMERLY SHUEY

APPELLANT

v. APPEAL FROM HOPKINS CIRCUIT COURT
HONORABLE CHARLES W. BOTELEER, JR., JUDGE
ACTION NO. 94-CI-00602

JOSEPH A. SHUEY

APPELLEE

OPINION
AFFIRMING

** ** * * *

BEFORE: BARBER AND SCHRODER, JUDGES; HUDDLESTON, SENIOR JUDGE.¹

BARBER, JUDGE: Appellant, Tammy A. Sanders (Sanders), appeals from assumption of jurisdiction of a district court matter by the Hopkins Circuit Court. Because the circuit court properly assumed jurisdiction over the matter pursuant to KRS 403.765, we affirm.

Sanders and Appellee, Joseph A. Shuey (Shuey), have a minor child. They were divorced in 1991. The parties shared custody of the child, with Sanders being the residential

¹ Senior Judge Joseph R. Huddleston sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and KRS 21.580.

custodian of the child. During visitation in the summer of 2001, Shuey beat the child with a paddle, causing injury to the child. The child was eleven years old at the time. Shuey described his actions as an "attitude adjustment." The incident occurred in response to the minor child asking Shuey not to say that he hoped Sanders, the child's mother, would "drop dead." Shuey then prevented the child from contacting his mother for aid or assistance during the weekend-long visitation period. The child was injured and bruised when he returned to Sanders' residence. Sanders sought police protection for the child after he returned home. An investigation was undertaken by the police. Testimony and photographs were made part of that investigation.

Following the abuse, Shuey continued to threaten the child over the telephone, stating that the child needed another "attitude adjustment," and threatening to beat him again during the next scheduled visitation. The threats caused trauma and injury to the child. The child testified that Shuey was short-tempered, screamed a lot, and spoke badly about Sanders during visitation periods.

Sanders filed a Petition and Motion for a Domestic Violence Order seeking to bar Shuey from visitation with the child. An Emergency Protective Order (EPO) was issued by the Hopkins District Court. After a hearing, the Hopkins District

Court issued a Domestic Violence Order (DVO) preventing Shuey from contacting or visiting the child for one year. The EPO was in effect until May 28, 2002. Shuey did not appeal the DVO, and did not take any action requesting that the DVO be set aside or modified. Prior to expiration of the DVO, Sanders sought and received an extension of the DVO through May 13, 2005. KRS 403.750(1) and (2) permit granting and extension of a DVO by the District Court.

After issuance of the continued DVO, Shuey filed a motion in district court to amend the DVO pursuant to KRS 403.750(3). That motion was overruled. Shuey then filed a motion asking the district court to transfer the matter to circuit court. That motion was denied. Shuey did not appeal the DVO, the extension of the DVO, or the denial of his motion for transfer. These matters are properly appealed to circuit court. Elery v. Martin, 4 S.W.3d 550, 552 (Ky.App. 1999). Instead, Shuey filed a petition in circuit court asking the circuit court to certify the DVO pursuant to KRS 403.765, and to conduct a hearing on his motion to amend the DVO. Sanders filed a motion to dismiss the Petition, arguing that the petitioner was improperly attempting to amend a DVO issued by the Hopkins District Court. Sanders asserted that Shuey was forum shopping for a judge to overturn the DVO. The circuit court accepted

jurisdiction over Sanders' objection, and did not address the jurisdictional issues raised by Sanders.

The Hopkins Circuit Court certified the DVO, and referred the motion to amend to the domestic relations commissioner. During the time the domestic relations commissioner was conducting her review of the matter, Shuey filed a letter with the DRC making unsupported accusations of abuse against Sanders and her husband. No support exists in the record for these assertions. Shuey's accusations are consistent with the inappropriate pattern of interaction between Shuey and his ex-wife and child. The record does not contain any investigation into Shuey's assertions and the domestic relations commissioner failed to address the assertions during her review of the matter. The assertions are wholly unsupported by the record.

The minor child, aged 13, testified before the domestic relations commissioner. The child did not indicate a desire to have contact with Shuey. When asked, the child stated that it would not upset him to receive mail from Shuey, so long as the mail did not contain negative comments about his mother. The child testified that he was afraid of physical visitation with Shuey, even if such visitation was supervised and of relatively short duration. He stated that he did not at any

time want to physically visit with Shuey. The child discussed the impact his fear of Shuey had on his life.

The child's social worker, Ms. Coomes, a victim's advocate for Sanctuary, Inc., testified that the child has consistently been afraid of Shuey since the abuse occurred. The child is concerned that Shuey will kidnap and harm him. The child is paranoid and anxious in school regarding potential contact with Shuey. These fears have caused the child to be paranoid about being alone and unsupervised, and have adversely affected his life.

Sanders testified that she would permit the child to exchange mail or telephone calls with Shuey, but that she did not want physical contact between Shuey and the child. Sanders stated that such contact should not be permitted, if at all, unless Shuey successfully completed an anger management counseling program. Sanders indicated that she did not want unsupervised visitation between Shuey and the child. The record does not contain evidence indicating that Shuey has addressed the abusive behavior, or that he is remorseful for his threats and violence. Shuey testified that he wanted to establish contact with the child, and that he wanted two week long visitation with the child in the summers.

The domestic relations commissioner held a hearing, and filed recommendations. The recommendation of the domestic

relations commissioner was that the DVO be amended to permit Shuey contact with the minor child. The domestic relations commissioner recommended that Shuey be permitted limited supervised contact with the child. The DRC also recommended that Shuey complete an anger management course, and that both Shuey and Sanders complete the Cooperative Parenting Program. The domestic relations commissioner indicated that the child should be required to complete the Children of Divorce program. The domestic relations commissioner recommended that visitation be revisited after the recommendations contained in the report had been completed.

The domestic relations commissioner found that under KRS 403.750(3), the circuit court was permitted to dismiss the DVO, affirm the DVO, or modify the district court's rulings and order. Sanders filed exceptions to the domestic relations commissioner's recommendations, claiming that Shuey could not take the matter to circuit court after his failed motion to amend the DVO in district court. The circuit court overruled Sanders' exceptions, and adopted the domestic relations commissioner's report and recommendations in its entirety. The circuit court did not address the jurisdictional claims raised by Sanders.

District and circuit courts of Kentucky have joint jurisdiction in domestic violence matters. KRS 403.725

recommends that the issuing judge have continuing jurisdiction and oversight over domestic violence matters. KRS 403.735(3)(c) provides that each judicial district shall establish a protocol for handling such matters. The 4th Judicial Circuit, which includes Hopkins County, has a protocol requiring a domestic violence matter to remain in district court unless there is a dissolution pending in circuit court. In this case, no dissolution was pending, as the divorce was completed in 1991. Sanders claims that a district court matter may be appealed to circuit court, but the circuit court does not have jurisdiction over a district court domestic violence matter absent an appeal.

KRS 403.765 provides that:

If, following the entry of an order authorized by KRS 403.740 or 403.750, or the authentication of a foreign protective order pursuant to KRS 403.737, 403.7521, 403.7524, 403.7529, 403.7731 or 403.7535, the petitioner or the adverse party initiate an action in the Circuit Court under the provisions of this chapter, the party filing the petition shall certify the existence and status of any domestic violence protective orders. Unless the Circuit Court issues and serves an order pertaining to the same subject matter of any existing domestic violence order, orders of the District Court or the issuing court shall remain in effect and shall be enforced in either District or Circuit Court. (Emphasis ours)

Sanders contends that this statute does not give a party the right to overlook a district court ruling, and seek a new ruling in circuit court on the same matter absent an appeal

of the district court ruling. Sanders argues that the circuit court did not have familiarity with the case, and did not have an understanding of why the order was granted initially, or why it was extended for an additional three years. She contends that this lack of information led to an erroneous decision, and was violative of Kentucky law. Shuey asserts that the law permits the circuit court to revisit the DVO matter, and to take action thereon without regard to the district court's earlier rulings.

The statutes relating to domestic violence matters are to be interpreted to allow victims protection against further abuse and violence. KRS 403.715(1). Sanders argues that permitting a circuit court jurisdiction over a district court DVO may result in a lack of protection for the victim. This Court recognizes that domestic violence orders do not serve to provide the same relief granted by custody or divorce proceedings. Cottrell v. Cottrell, 114 S.W.3d 257, 258 (Ky.App. 2002). In that case the Court rejected a claim by a party that the circuit court with jurisdiction over custody and visitation could overrule another court's DVO. In rejecting the argument, the court stated that the relief sought by the appellant "would render ineffective the very protections our domestic violence statutes were enacted to provide." Id., 114 S.W.3d at 259.

We believe that KRS 403.765 very clearly establishes the authority for a circuit court to review a DVO upon a petition for certification, and issue orders pertaining to the same subject matter. Local rules pertaining to protocol do not supercede law set out in the Kentucky Revised Statutes.

We are cognizant of the positive effect family courts have had in avoiding this type of conflict. Based upon the foregoing, the judgment of the Hopkins Circuit Court is affirmed.

SCHRODER, JUDGE, CONCURS.

HUDDLESTON, SENIOR JUDGE, CONCURS IN RESULT.

BRIEF FOR APPELLANT:

William R. Whitley
Madisonville, Kentucky

BRIEF FOR APPELLEE:

William A. Nisbet III
Madisonville, Kentucky