

RENDERED: FEBRUARY 11, 2005; 2:00 p.m.
NOT TO BE PUBLISHED

Commonwealth Of Kentucky

Court Of Appeals

NO. 2004-CA-001695-ME

GLEND A WALTERS

APPELLANT

v. APPEAL FROM JEFFERSON FAMILY COURT
HONORABLE LOUIS I. WATERMAN, JUDGE
ACTION NO. 04-D-502383

TIM KELLEY

APPELLEE

OPINION
AFFIRMING

** ** * * *

BEFORE: COMBS, CHIEF JUDGE; DYCHE AND KNOPF, JUDGES.

KNOPF, JUDGE: Glenda Walters and Tim Kelley are an unmarried couple who have a child in common. On July 24, 2004, Kelley filed a domestic violence petition against Walters on behalf of their eighteen-month old child, C.D.K.¹ The petition alleged that on July 23, Walters came home intoxicated and entered into an argument with him and Walters's thirteen-year old son. Kelley

¹ In accordance with this Court's policy, we will refer to the child by only its initials.

alleged that, during the course of the argument, Walters struck him and the thirteen-year old and also hit C.D.K. with her knee, knocking the child to the floor. Kelley further alleged that Walters screams at the child all of the time, and that she is careless when caring for the child. In response to the petition, the court entered an emergency protective order. Following a hearing on August 9, the trial court entered a domestic violence order against Walters, enjoining her from further acts of domestic violence, awarding custody of C.D.K. to Kelley, restraining her from further contact with C.D.K except for supervised visitation, and directing her to participate in available counseling services. Walters now appeals. Finding no error, we affirm.

Walters argues that the evidence did not support a finding either that an act of domestic violence had occurred or that it may occur again in the future. At most, the evidence shows only that she accidentally knocked over C.D.K. with her knee during the altercation. Walters contends that such incidental and inadvertent contact did not justify entry of a domestic violence order against her.

Pursuant to KRS 403.750(1), a court may enter a domestic violence order "if it finds from a preponderance of the evidence that an act or acts of domestic violence and abuse have

occurred or may again occur" ... KRS 403.720(1) defines "domestic violence and abuse" to mean:

physical injury, serious physical injury, sexual abuse, assault, or the infliction of fear of imminent physical injury, serious physical injury, sexual abuse, or assault between family members or members of an unmarried couple.

Although Walters refers to the videotape of the hearing in her brief, she did not certify the tape as part of the record on appeal. In the absence of a record of the testimony at the hearing, we must assume that the evidence supported the trial court's conclusions. Furthermore, even accepting Walters's representations concerning the testimony at the hearing, we cannot find that the trial court clearly erred in entering a domestic violence order against her.

Walters does not dispute Kelley's account of the incident in his petition, nor does she deny that she knocked over C.D.K. during the course of the argument with Kelley and the thirteen-year old. Rather, she asserts that her contact with the child was not intentional and there was no other evidence that she ever endangered the child at that or any other time. Nevertheless, Kelley's petition alleges that Walters substantially escalated her verbal argument with him and the thirteen-year old, thereby increasing the likelihood that the child might be struck inadvertently. Consequently, the trial

court properly found that Walters inflicted a "fear of imminent physical injury... or assault" on C.D.K.

Likewise, Kelley alleged in his petition that there had been minor violence in the past, that Walters has been careless when keeping C.D.K. and screams at the child all of the time, that C.D.K. was frightened by Walters's behavior, and that he was in fear for the child's safety. These allegations, while not particularly compelling separately, when taken together could support a conclusion that additional acts of domestic violence may occur in the future. In the absence of a videotape of the hearing and in light of these allegations, we cannot say that the trial court clearly erred by entering the domestic violence order.

Accordingly, the domestic violence order entered by the Jefferson Family Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

No brief for appellee

David S. Stevenson
Smith & Helman
Louisville, Kentucky