

Commonwealth Of Kentucky
Court of Appeals

NO. 2004-CA-002265-ME

JULIAN WAYNE GRIFFITH

APPELLANT

v. APPEAL FROM WARREN FAMILY COURT
HONORABLE MARGARET RYAN HUDDLESTON, JUDGE
ACTION NO. 02-D-00299

HEATHER RAE GRIFFITH

APPELLEE

OPINION
REVERSING

** ** * * *

BEFORE: BUCKINGHAM, DYCHE, AND TAYLOR, JUDGES.

DYCHE, JUDGE: Julian Wayne Griffith appeals from a domestic violence order entered against him by the Warren Family Court which denies him any contact with his ex-wife, appellee Heather Griffith, orders him to undergo domestic violence and substance abuse assessment/counseling, and suspends his visitation rights with his two children. Heather has filed no brief. Because we find no evidence of domestic violence as defined by the statute, and that Julian was deprived of due process rights, we reverse the order.

Heather filed the petition on Saturday, October 16, 2004, alleging that Julian had made a series of threatening telephone calls to her, had discharged a gun while on the telephone and with their children, and had threatened his own life. An Emergency Protective Order/Summons was issued by the family court, setting a hearing on the petition for Monday, October 18 at 10:30 a.m. The EPO/Summons was served on Julian at 3:52 a.m. on the 18th, less than seven hours before the hearing.

The hearing was conducted on the 18th, with Heather and Julian as the only witnesses. Heather testified consistently with the petition, and alleged that a micro cassette tape of her voice mail messages from her cellular telephone would bear out her allegations. Julian denied making any threats, asserted that Heather's allegations were "out of left field" for him, and that she called him an equal number of times during the same period. He asked the presiding judge to be sure and listen to the recordings of his calls, as tendered by Heather, before making any decision.

The judge ruled from the bench immediately, without listening to the tape, and found that Julian had been provided reasonable notice and opportunity to be heard, and that "an act(s) of domestic violence or abuse ha[d] occurred and may again occur." The above described order was entered.

Julian, to no avail, moved the court to amend the domestic violence order after the court had listened to the tape of his calls. He also asked in the motion that his visitation be reinstated. He asserted, again, that a review of the tape would show that he had made no threats, toward himself, Heather, or the children. This appeal followed.

KRS 403.720(1) defines "Domestic violence and abuse" as:

[P]hysical 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

We have examined the entire record, watched the tape of the hearing, and listened to the tape of the allegedly threatening telephone calls, and can find no evidence which meets the above definition or supports the order. Instead of supporting Heather's allegations, the tape of the calls merely shows a young divorced man disappointed with the break-up of his family. There are no threats, and certainly no gunshots heard on the tape.

In addition, we find that the notice Julian received of the hearing is woefully short of due process requirements. With the EPO in effect, we wonder what provoked the headlong rush to have a hearing less than seven hours after he was served

with the summons and EPO in the middle of the night. Although he did not raise the issue himself, if he had had time to obtain counsel, his rights could and would have probably been more diligently observed.

We recognize the serious and pervasive problem of domestic violence, and agree that every reasonable effort should be taken to prevent it; the man in these situations is nevertheless not without rights, including the right to reasonable notice of a hearing which could have such terrific ramifications upon him and his relationship with his children, and the right to obtain counsel to represent him. It may well be that Julian is the perpetrator, and Heather the victim, of actual domestic violence; this record, however, does not bear that out at this time.

The order of the Warren Family Court is reversed.

ALL CONCUR.

BRIEF FOR APPELLANT:

NO BRIEF FOR APPELLEE

Kenneth A. Meredith, II
Bowling Green, Kentucky