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NOT TO BE PUBLISHED

Commonwealth Of Kentucky

Court of Appeals

NO. 2005-CA-000383-ME

RONNIE LEE OLLER, SR. — APPELLANT

v.

APPEAL FROM JEFFERSON FAMILY COURT
HONORABLE JERRY BOWLES, JUDGE
ACTION NO. 05-D-500235-001

BRENDA OLLER AND
HON. JERRY BOWLES, JUDGE,
JEFFERSON DISTRICT COURT — APPELLEES

OPINION
AFFIRMING

** ** ** ** **

BEFORE: COMBS, CHIEF JUDGE; HENRY AND SCHRODER, JUDGES.

HENRY, JUDGE: Ronnie Lee Oller, Sr. appeals from the entry of a Domestic Violence Order against him by the Jefferson Family Court. Upon review, we affirm.

On January 25, 2005, Brenda Oller filed a domestic violence petition in the Jefferson Family Court requesting an emergency protective order against her husband Ronnie. In the petition, it was set forth that Brenda and Ronnie had been

married for approximately 36 years, but that the couple had been separated since December 3, 2004. The petition also indicated that Ronnie had physically abused Brenda on a regular basis 15 to 20 years ago. It further provided that on January 24, 2005 – the day before the petition was filed – Ronnie had called Brenda's place of employment and had attempted to advise her boss that she was not safe around children and should not be working near them. The petition also stated that on January 21, 2005, Ronnie phoned Brenda and threatened to ruin her life or get her fired if she did not have sex with him, and that he had phoned her approximately 30 times over the past two months making similar threats. The petition finally provided that Brenda was "scared to death" of Ronnie because of the physical abuse he had inflicted upon her in the previous years. After reviewing the petition, the family court entered an emergency order of protection and summons effective until February 4, 2005, at which date a hearing was to be held on Brenda's petition.

On February 4th, the scheduled hearing took place, and the family court heard testimony from both Brenda and Ronnie. Upon its conclusion, the court found Brenda had produced enough evidence to merit entry of a domestic violence order. It subsequently entered a domestic violence order effective until February 3, 2008, prohibiting Ronnie from any contact or

communication with Brenda, ordering him to remain 1000 feet away from Brenda or her household at all times, restraining him from disposing of or damaging any property belonging to the parties, and ordering him to vacate the residence that had been previously shared by the parties. The court also entered a domestic violence treatment order and an order for Ronnie to surrender all of his firearms to the Jefferson County Sheriff's Department. This appeal followed.

On appeal, Ronnie contends that Brenda failed to prove by a preponderance of the evidence that domestic violence against her was likely to occur again, as he submits is required by KRS[1] 403.750. Ronnie specifically argues that he "is now being punished for something that may have occurred in the past," a reference to Brenda's testimony at the hearing that Ronnie regularly beat her and sexually assaulted her 15 to 20 years ago – facts which Ronnie did not deny. He further argues that there have been no acts of physical violence since then, and that Brenda admitted at the hearing that Ronnie had not overtly threatened her with physical violence since the parties separated in December 2004. Ronnie also notes that, following the separation, he moved to the parties' property in Breckinridge County and ultimately took the initiative in filing for divorce. He further notes that he and Brenda had engaged in

[1] Kentucky Revised Statutes.

voluntary sexual relations on January 3, 2005. These facts taken together, he ultimately contends, could not have led to the family court's conclusion that domestic violence was likely to occur again.

KRS 403.750(1) sets forth that a domestic violence order may be entered against an individual if a court "finds from a preponderance of the evidence that an act or acts of domestic violence and abuse have occurred and may occur again[.]" "Domestic violence and abuse" is defined by KRS 403.720(1) to include "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[.]" KRS 503.010(3) defines "imminent" as meaning "impending danger" and further provides that, in the context of domestic violence and abuse as defined by KRS 403.720, belief that danger is imminent can be inferred from a past pattern of repeated serious abuse."

In reviewing the family court's decision, we will not disturb its factual findings unless they are clearly erroneous, with due regard given to the opportunity of the court to view the credibility of the witnesses. CR[2] 52.01; Reichle v. Reichle, 719 S.W.2d 442, 444 (Ky. 1986). The family court's application

[2] Kentucky Rules of Civil Procedure.

of the law to the facts will not be disturbed absent an abuse of discretion. Cherry v. Cherry, 634 S.W.2d 423, 425 (Ky. 1982) (Citation omitted). "Abuse of discretion" implies that the trial court's decision is unreasonable or unfair. Kuprion v. Fitzgerald, 888 S.W.2d 679, 684 (Ky. 1994) (Citations omitted).

After reviewing the hearing and petition, we believe the evidence strongly supports the family court's conclusion that Brenda was subjected to physical and sexual abuse earlier in the parties' marriage. As previously noted, Brenda testified at the hearing that Ronnie regularly beat her and sexually assaulted her 15 to 20 years ago – facts which Ronnie did not deny. Brenda further testified that two years prior to the filing of her petition, Ronnie threatened to kill her as he was walking out of the parties' home. When she locked the door behind him and tried to call 911, he apparently broke a lock on a window and attempted to crawl back into the house.

Consequently, the only issue really in question is whether it was shown by a preponderance of the evidence that such abuse "may occur again." KRS 403.750(1). Brenda explained at the hearing that while she did have sexual relations with Ronnie on January 3, 2005, she did so out of a fear of what he would do if she refused him, as Ronnie used to rape her when she refused to have sex with him. As further noted by the family court, the evidence presented also demonstrates a pattern of

threatening behavior following the parties' December 2004 separation. In a particularly bizarre act, Ronnie painted the doors and windows of Brenda's home red and cut her screens when she was not there. He also circled the house on a frequent basis and made numerous phone calls to Brenda. He further threatened on a regular basis to "ruin" Brenda's life if she would not have sexual relations with him – statements which she perceived as being physical threats; indeed, she told the court that she believed that Ronnie would eventually kill her. Ronnie also called Brenda's place of employment in an effort to tell her boss that she was unfit to work around children and should be fired. Brenda further testified that Ronnie repeatedly screamed at and belittled her and accused her of affairs. He also had apparently secretly tape-recorded her telephone conversations for three years.

The family court concluded that this recent conduct, along with Ronnie's history of physical and sexual abuse, could lead to fear on Brenda's part that she would be subjected to imminent physical injury again by Ronnie and decided that entry of a domestic violence order was appropriate. We see nothing in the record to suggest that the court's factual findings are clearly erroneous or that it abused its discretion in reaching this conclusion, particularly given the preponderance of the evidence standard that must be employed pursuant to KRS 403.750.

We finally address Ronnie's brief contention that the family court "failed to reference any evidence presented at the hearing to support the contention that domestic [violence] may occur again," which we construe as a claim that the court's findings of fact were insufficient. Our review of the record shows that no request for additional findings was made as required by CR 52.04. Failure to bring a purported omission in the factual findings to the trial court's attention is fatal to appeal of the issue. Vinson v. Sorrell, 136 S.W.3d 465, 471 (Ky. 2004) (Citations omitted); Eiland v. Ferrell, 937 S.W.2d 713, 716 (Ky. 1997) (Citation omitted). Accordingly, the argument must be rejected.

The decision of the Jefferson Family Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:	BRIEF FOR APPELLEE:
Jason Datillo Louisville, Kentucky	Barbara A. Sullivan Louisville, Kentucky