

RENDERED: FEBRUARY 24, 2006; 2:00 P.M.
NOT TO BE PUBLISHED

Commonwealth Of Kentucky
Court of Appeals

NO. 2005-CA-001162-ME

JEFFERY O'NEIL HEMPHILL

APPELLANT

v. APPEAL FROM JEFFERSON FAMILY COURT
HONORABLE JOAN L. BYER, JUDGE
ACTION NO. 05-D-501264

SANDRA KAY BEST

APPELLEE

OPINION
VACATING AND REMANDING

** ** * * *

BEFORE: TACKETT AND TAYLOR, JUDGES; EMBERTON, SENIOR JUDGE.¹

TACKETT, JUDGE: Jeffery O'Neil Hemphill appeals from a domestic violence order entered by the Jefferson Family Court after a hearing on May 9, 2005. He argues on appeal that he was not given adequate notice of the existence of the petition filed by Sandra Kay Best, as he believed he was in court solely to address the petition he filed against Ms. Best out of the same

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

incident. We agree that the court denied him due process by entering an order on Best's petition without giving Hemphill time to prepare or obtain counsel.

The incident which led to the proceedings under review involves parties who lived together for about two months and who had dated for a year and a half. The occurrence took place on April 30, 2005, and the petition filed by Best reflects that she had been served with a petition from Hemphill. Hemphill, however, was not served with Best's petition, and the record reflects that service was attempted three times without success. The family court read the allegations contained in the Best complaint into the record, and entered an order on the complaint without giving Hemphill an opportunity to obtain counsel even though Hemphill expressed concern about the allegations and argued that they were false.

Best did not file a brief with this Court regarding this matter, so the Court is left with only Hemphill's statement of the case and the record of the lower court. Having reviewed the record, we agree that it supports Hemphill's contention that he was denied due process. Hemphill seemed surprised that Best had filed a petition of her own. The court, after Hemphill argued that he had not been served, said "that is correct, you just happen to be lucky enough to show up" that day in court. It is apparent to this Court that there was not enough regard

shown for Hemphill's right to adequate notice of the allegations and an opportunity to answer them. Even though a domestic violence order is a civil matter, it has serious consequences for a person subject to such an order, and Hemphill ought not be subject to those consequences without an opportunity to adequately address the allegations made. Adequate notice is essential to protect a party's due process rights; inadequate notice denies a party an opportunity to prepare effective cross-examination of witnesses or to produce evidence in rebuttal. P.J.H. v. Cabinet for Human Resources, 743 S.W.2d 852, 853-54 (Ky. 1987), In re Gault, 87 S.Ct. 1428 (1967). Hemphill was not provided with a copy of the petition, and a request to reschedule the hearing was denied without adequate explanation. We agree that, at a minimum, the court should have given him a copy of the petition and granted Hemphill a continuance to obtain counsel or to otherwise prepare to answer the allegations contained in the petition. Since the court did neither, we must vacate its order and remand the matter for proceedings consistent with this opinion.

For the foregoing reasons the order of the Jefferson Family Court is vacated and the matter remanded for further proceedings.

ALL CONCUR.

BRIEF FOR APPELLANT:

NO BRIEF FOR APPELLEE

Olu A. Stevens
Louisville, Kentucky