

Commonwealth Of Kentucky

Court of Appeals

NO. 2005-CA-001447-ME
AND
NO. 2005-CA-001448-ME

JOHN C. BIERBAUM

APPELLANT

v. APPEALS FROM JEFFERSON FAMILY COURT
HONORABLE JOAN L. BYER, JUDGE
ACTION NOS. 05-D-501715-001 & 05-D-501721-001

SHEENA R. BIERBAUM

APPELLEE

OPINION
AFFIRMING

** ** * * * * *

BEFORE: BARBER, BUCKINGHAM, AND McANULTY, JUDGES.

McANULTY, JUDGE: In these combined appeals, appellant John Bierbaum alleges that the Jefferson Family Court erred in entering a domestic violence order against him and dismissing the petition for a domestic violence order he brought against appellee Sheena Bierbaum, his wife. The couple is in the midst of a divorce action.

In order to establish the need for a domestic violence order, the claimant must show "that an act or acts of domestic violence and abuse have occurred and may again occur." KRS 403.750(1). Kentucky statutory law defines "domestic violence and abuse" as "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 403.720(1). The standard requires that the party claiming domestic violence occurred must demonstrate that fact by a preponderance of the evidence. KRS 403.750(1). The reviewing court shall not set aside findings of fact unless clearly erroneous, and shall give due regard to the opportunity of the trial court to judge the credibility of the witnesses. CR 52.01.

The trial court properly entered the domestic violence order against appellant in action no. 05-D-501715-001. There was evidence that he inflicted physical injury on appellee. The couple's quarrel was about their property which had not been divided yet. We find no error in the trial court's conclusion that domestic violence may again occur.

The trial court properly denied the domestic violence order against appellee in action no. 05-D-501721-001. Appellee's actions were not shown to meet the definition of

domestic violence. Indeed, the trial court's finding that appellant's domestic violence petition was retaliatory in nature, in response to appellee's previously filing a petition for a domestic violence order, should have given appellant pause before filing the instant appeal. The trial court did not err.

For all the foregoing reasons, the orders of the Jefferson Family Court are affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

Joseph V. Mobley
Jennifer L. Hulse
Louisville, Kentucky

BRIEF FOR APPELLEE:

Mary Janice Lintner
Lynch, Cox, Gilman & Mahan,
P.S.C.
Louisville, Kentucky