

RENDERED: JUNE 8, 2007; 2:00 P.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2006-CA-001701-ME

TIMOTHY W. PARDUE, JR.

APPELLANT

v. APPEAL FROM JEFFERSON FAMILY COURT
HONORABLE JERRY J. BOWLES, JUDGE
ACTION NO. 06-D-501977

DAWN ANN PARDUE

APPELLEE

OPINION
AFFIRMING

** ** * * * **

BEFORE: ABRAMSON, ACREE, AND WINE; JUDGES.

ACREE, JUDGE: Timothy Pardue appeals from a Domestic Violence Order (DVO) entered by the Jefferson Family Court finding that he committed an act of domestic violence against his wife, Dawn Pardue, and prohibiting him from contacting her until the order expires. Timothy argues that neither the allegation in Dawn's petition, nor the evidence introduced at the hearing established that domestic violence had occurred and was likely to occur again. We disagree and affirm the trial court.

Dawn filed a petition requesting a DVO on July 7, 2006. At that time, the parties had been married for nineteen years, but separated for five months. They also had two minor children. Although she admitted Timothy never physically endangered her, she alleged that, on the date of the petition, he followed her to her workplace and reappeared when she left the building to go to lunch. When she attempted to go back inside he physically prevented her from getting out of the car while yelling at her. Dawn's petition claimed her husband had also followed her to Kroger and had repeatedly appeared without invitation, in the parking lot of her workplace. Finally, Dawn alleged that Timothy seriously injured himself while she was in the car with him and made threatening comments to her.

At a hearing held July 13, 2006, Dawn testified that she feared for her safety because Timothy's attempts to contact her were escalating. She stated that he had been following her and attempting to call her since they separated in February. The family court found that an act of domestic violence or abuse had occurred and might occur in the future. The court entered a DVO restraining Timothy from attempting to contact or communicate with Dawn, coming within one thousand feet of her, or disposing of or damaging her property. Timothy filed this appeal, and Dawn did not file a brief in response.

On appeal, Timothy argues that neither domestic violence, nor the future likelihood of domestic violence was established as required by statute. Prior to entry of a DVO, the court must find “from a preponderance of the evidence that an act or acts of

domestic violence and abuse have occurred and may again occur” Kentucky Revised Statute (KRS) 403.750(1). The definition of domestic violence and abuse, found in KRS 403.720(1), includes “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” The standard of review for factual determinations is whether the family court's finding of domestic violence was clearly erroneous. Kentucky Rule of Civil Procedure (CR) 52.01; *Reichle v. Reichle*, 719 S.W.2d 442, 444 (Ky. 1986). “[W]e must bear in mind that in reviewing the decision of a trial court the test is not whether we would have decided it differently, but whether the findings of the trial judge were clearly erroneous or that he abused his discretion.” *Cherry v. Cherry*, 634 S.W.2d 423, 425 (Ky. 1982) (citation omitted). Abuse of discretion occurs when a court's decision is unreasonable or unfair. *Kuprion v. Fitzgerald*, 888 S.W.2d 679, 684 (Ky. 1994) (citations omitted).

Timothy argues that the only basis for a finding of domestic violence between himself and Dawn would be the language regarding infliction of fear. KRS 403.720(1). However, he hastens to add that Dawn's petition makes no reference to infliction of fear of imminent physical injury. We disagree. Dawn's petition describes Timothy's response to her statement to him that she wanted to leave him as follows:

[Timothy] pulled the car over to the side of the road. Then [Timothy] used a razor blade to cut his right arm and his left wrist. [Timothy] needed about 52 stitches on his right arm and more stitches on his wrist. [Timothy] said he did this to himself because he really wanted to do it to [Dawn.]

Timothy's act of inflicting a serious injury on himself, coupled with his threatening comment to Dawn, certainly supports a finding that he placed her in fear of imminent physical injury, particularly given that she was confined in a car with him at the time. Further, her petition describes an escalating pattern of harassing behavior lasting five months. This harassment culminated in the July 7, 2006, incident in which Timothy prevented her from getting out of her car by blocking the door on the driver's side and pulled on her shirt and her arm to keep her from climbing across to the unobstructed passenger door. At the hearing, Dawn specifically testified that she was afraid. She described Timothy's acts of following her and calling her and showing up at her workplace since February 2006, and stated that his attempts to contact her were escalating. Based on the allegations in the petition and the evidence before the family court, Timothy fails to persuade us that the decision to grant a DVO was an abuse of discretion.

Timothy argues that the family court's order contains no specific finding that he committed an act of domestic violence against Dawn or that such an act might occur in the future. This argument is unavailing. The family court made all necessary findings, including the finding “that it was established, by a preponderance of the evidence, that an act(s) of domestic violence or abuse has occurred and may again occur[.]” In the absence of Timothy's request for additional findings pursuant to CR 52.04, this was sufficient. Timothy's failure to file a CR 52.04 motion is fatal to his 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, we reject this argument.

For the foregoing reasons, the judgment of the Jefferson Family Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

NO BRIEF FOR APPELLEE.

David S. Stevenson
Louisville, Kentucky