

# Commonwealth Of Kentucky

## Court of Appeals

NO. 2006-CA-002211-MR

ROBERTO BARRERA

APPELLANT

v.

APPEAL FROM JEFFERSON CIRCUIT COURT  
HONORABLE DOLLY WISMAN BERRY, JUDGE  
ACTION NO. 06-D-502141

HILDA VEGA

APPELLEE

OPINION  
AFFIRMING

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BEFORE: LAMBERT AND VANMETER, JUDGES; KNOPF,<sup>1</sup> SENIOR JUDGE.

KNOPF, SENIOR JUDGE: Roberto Barrera appeals the September 27, 2006, domestic violence order issued against him on behalf of Hilda Vega and her infant children. We affirm.

On July 20, 2006, Vega filed a domestic violence petition in Jefferson

Family Court seeking a domestic violence order (hereinafter “DVO”) on behalf of herself

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<sup>1</sup> Senior Judge William L. Knopf sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and Kentucky Revised Statutes 21.580.

and her two infant children. In her petition, Vega claimed that Barrera was the father of her youngest child and alleged that Barrera had made numerous death threats against Vega and both children. A hearing was held on September 5, 2006, at which time Barrera argued that the court lacked jurisdiction to issue the DVO. In support of this argument, Barrera claimed that the parties had never resided together nor married. Barrera further argued that Vega's marriage to someone else at the time of the youngest child's birth created a presumption of paternity on behalf of Vega's husband. The court did not accept Barrera's argument and on September 27, 2006, entered a DVO on behalf of Vega and both children for a period of three years. This appeal followed.

On appeal, Barrera presents the same argument that he presented to the trial court: lack of personal and subject matter jurisdiction. In support of this argument, he references several cases as well as KRS<sup>2</sup> 406.011, which states, in part: “[a] child born during lawful wedlock, or within ten (10) months thereafter, is presumed to be the child of the husband and wife.” We do not believe this statute, or the cases presented by Barrera, to be relevant when determining who may file for protective orders. Chapter 406 pertains to paternity determinations in dissolution or paternity actions. Determining paternity is not a function of the domestic violence court. We believe the relevant law in this situation can be found in Chapter 403.

KRS 403.725 governs who may file a petition for a protective order and states, in part:

- 1) Any family member or member of an unmarried couple who is a resident of this state or has fled to this state to escape domestic violence and abuse may file a verified petition in the District Court of the county in which he resides. . . .

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<sup>2</sup> Kentucky Revised Statutes.

(2) Any family member or any member of an unmarried couple, as those terms are defined in KRS 403.720, may file for and receive protection under KRS 403.715 to 403.785, notwithstanding the existence of or intent to file an action in the Circuit Court by either party under the provisions of this chapter.

KRS 403.720 provides the following definitions:

(2) "Family member" means a spouse, including a former spouse, a parent, a child, a stepchild, or any other person related by consanguinity or affinity within the second degree; and

(3) "Member of an unmarried couple" means each member of an unmarried couple which allegedly has a child in common, any children of that couple, or a member of an unmarried couple who are living together or have formerly lived together.

In its order approving the DVO, the trial court placed emphasis on the word

“allegedly” from KRS 403.720(3) and stated:

[t]he definition of allege, per Black's Law Dictionary is “to state, recite, assert, or charge; to make an allegation.” There is no doubt that Ms. Vega believes Mr. Barrera is her baby's father. The evidence indicated that Mr. Barrera also thought he was the child's father and acted as if he was. Pending the results of DNA testing, Mr. Barrera is “allegedly” the father. There is no requirement that paternity has to be proven.

The court also does not believe the legislative concerns about “bastardizing a child” apply in a situation where the intent is solely to establish an “intimate” relationship between the parties who are seeking protective orders.

We agree with the reasoning of the trial court in its entirety. We do not believe that paternity has to be proven in order to create a legal relationship which would warrant a protective order. Furthermore, we believe that to require so would create a conflict with the intent of the statutes to provide protective orders to those who are in need of them as well as a conflict of public policy. The trial court did not establish

paternity but rather used the allegation of paternity to establish sufficient grounds for the grant of protection.

For the foregoing reasons, the September 27, 2006, Jefferson County Circuit Order is affirmed.

ALL CONCUR.

BRIEFS FOR APPELLANT:

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BRIEF FOR APPELLEE:

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