

Commonwealth of Kentucky
Court of Appeals

NO. 2007-CA-001392-ME

JEFF ELDRIDGE

APPELLANT

v. APPEAL FROM KNOX FAMILY COURT
HONORABLE DURENDA LUNDY LAWSON, JUDGE
ACTION NO. 01-D-00220

LISA ELDRIDGE

APPELLEE

OPINION
AFFIRMING

** ** * * *

BEFORE: ACREE AND STUMBO, JUDGES; GRAVES,¹ SENIOR JUDGE.

ACREE, JUDGE: Jeff Eldridge appeals from an order of the Knox Family Court denying his requests for a new trial and to amend or vacate a Domestic Violence Order (DVO) obtained by his ex-wife, Lisa. Due to the untimely filing of these motions, we affirm the trial court.

Lisa originally obtained an Emergency Protective Order (EPO) against Jeff in September 2001. That EPO was never the basis of a DVO because of her failure to show up for court

¹ Senior Judge John W. Graves sitting as Special Judge by Assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and Kentucky Revised Statutes (KRS) 21.580.

hearings. Five years later, Lisa filed a petition for an EPO alleging that she feared for her safety and the safety of her children. There were no allegations of physical violence; however, she stated that Jeff had threatened her youngest son. The district court granted an EPO on December 11, 2006, and scheduled a hearing one week later.

On December 18, 2006, Jeff appeared without counsel. Evidently, the clerk's office was experiencing technical difficulties, and there was no recording made of the proceedings. The docket sheet notes the matter was continued for three years by agreement. Consequently, the district court entered a DVO on December 19, 2006, ordering Jeff to have no contact with Lisa or her sons during the period while the order remained in effect.

Two months later, Lisa petitioned the district court to amend the DVO to allow Jeff contact with her youngest son. She stated that she would be leaving for Mosul, Iraq, and that her son regarded Jeff as a father figure. The district court continued the matter and ordered social services to investigate the allegations in the original EPO petition. At some point during this process, the case was reassigned to the family court. The results of that investigation indicated that Jeff may have verbally threatened one of the boys, but there was no substantiated physical abuse. As a result, the family court

amended the DVO on March 2, 2007, to allow nonviolent contact. A week later, Lisa petitioned the family court to dismiss the DVO altogether. Jeff responded by filing a motion to have the DVO dismissed with prejudice, arguing that domestic violence was never shown to have occurred. Thus, he contended the order was improperly entered.

After Lisa completed a domestic violence victims program, as ordered by the family court, the DVO was dismissed on April 13, 2007. However, the family court did not enter the requested *nunc pro tunc* order dismissing the DVO with prejudice. The family court's order denying Jeff's request was entered May 7, 2007, and Jeff did not take an appeal from that order. Instead, he filed a motion with the family court requesting a new trial, pursuant to Kentucky Civil Procedure Rule (CR) 59.01 or that the judgment be amended or vacated, pursuant to CR 59.05. The family court denied the motion, and this appeal followed.

On appeal, Jeff argues the district court should never have granted the DVO because there was no *prima facie* case made out that domestic violence actually occurred. He further contends the family court should have granted his CR 59.01, 59.05, and 60.02 motions. In addition, he argues he was entitled to a new trial pursuant to CR 52.01 because the district and family courts failed to make findings of fact in support of their orders. Finally, he claims the family court committed substantial error in this case.

Out of all of the issues raised on appeal, we are only permitted to review arguments in support of Jeff's CR 59.01 and 59.05 motions. The remaining issues are not properly before this Court. Jeff failed to appeal from the original DVO, or any of the amended orders entered. In addition, he never raised the alleged lack of factual findings before the family court. It has long been held that failure to raise an issue before the trial court results in lack of preservation for review.

[Kennedy v. Commonwealth, 544 S.W.2d 219, 222 \(Ky. 1976\).](#)

With regard to Jeff's motion for dismissal under CR 60.02, we note that he failed to appeal from the family court's denial of his request for a *nunc pro tunc* order. The order denying *nunc pro tunc* dismissal was entered May 7, 2007. CR 73.02(1)(a) requires a notice of appeal to be filed within thirty days, and Jeff's notice of appeal was not filed until July 2, 2007. Further, CR 73.02(2) states that failure to file a timely notice of appeal "shall result in a dismissal or denial." Thus, we are foreclosed from considering any issues related to the family court's order of May 7, 2007. Finally, we note that in his notice of appeal, Jeff actually specified the family court's order of June 11, 2007, as the judgment appealed from. CR 73.03(1). Consequently, it is this order that is before us on appeal.

The family court's order entered June 11, 2007, denied Jeff's requests for relief under CR 59.01 and 59.05. The order stated in pertinent part that Jeff was seeking a new trial or to

amend or vacate "the Order entered herein on December 19, 2006, and as amended on March 2, 2007, and the Order dismissing entered April 13, 2007" Thus, the family court was ruling on requests pertaining to the original no contact DVO, the amended DVO allowing nonviolent contact, and the order dismissing the DVO. The family court overruled Jeff's motion without specifying any grounds for so doing. However, CR 59.02 requires a motion for a new trial to be served within ten days of the entry of judgment. Likewise, a motion to amend or vacate a judgment must be served within ten days. CR 59.05. Jeff's motion was filed on May 16, 2007, well outside the time limit of any of the orders sought to be vacated. Although the motion refers to the May 7, 2007, denial of *nunc pro tunc* relief, it is clear from both his motion and the family court's order appealed from herein, that he was seeking CR 59.01 and 59.05 relief from these earlier domestic violence orders. Consequently, his motion was untimely and the family court properly denied his request for relief.

We note that the DVO has in fact been dismissed since April 13, 2007. In his appeal, Jeff explains that he is now pursuing a nursing degree in Tennessee and is concerned that having a DVO issued against him in the past will impede his chosen career path. Thus, he seeks to remove any reference to the DVO from his records. While we may sympathize with his plight, his failure to comply with time constraints within the rules of civil procedure prevents us from reaching the merits of

his arguments concerning the alleged lack of evidence supporting the original DVO.

For the foregoing reasons, the judgment of the Knox Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

NO BRIEF FOR APPELLEE

Barbara Elliot Yeager
Barbourville, Kentucky