

Commonwealth of Kentucky
Court of Appeals

NO. 2024-CA-0217-ME

JESSE GARRIDO

APPELLANT

v. APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE JESSICA STONE, JUDGE
ACTION NO. 22-D-503241-003

ROBIN COOK

APPELLEE

OPINION
AFFIRMING

** ** * * * * *

BEFORE: ECKERLE, A. JONES, AND TAYLOR, JUDGES.

JONES, A., JUDGE: Jesse Garrido appeals a domestic violence order (DVO) entered by the Jefferson Circuit Court, Family Division, restraining him from coming within 500 feet of Robin Cook, with the exception of custodial exchanges in public places, and delivery of their child's medical equipment.¹ Following review of the record and all applicable law, we affirm.

¹ Cook and Garrido are both representing themselves *pro se* before this Court.

I. BACKGROUND

Cook and Garrido were previously in a romantic relationship and share two minor children. They are engaged in rather contentious and protracted parallel litigation before the family court involving the custody of those children.²

As related to the present appeal, Cook filed a petition seeking an order of protection on December 1, 2023. Therein, she alleged:

I am asking for protection for my entire household, myself, my children, and my partner from my children's father, Jesse Garrido. He has made repeated threats and continually harassed us for over a year. Today at our older son's well child visit he threatened to kill me. He is becoming more and more unhinged and erratic [*sic*] and I fear for myself and the kids because he has been stalking us relentlessly for so long. He stalks me and my partner on social media, downloading pictures and taking screen shots and printing them out to hold them up in doctor's [appointments], IEP^[3] meetings, etc. to illustrate his violent and strange fantasies about me and my partner. Everyone who cares about me is in danger from Mr. Garrido because he lashes out at anyone who seems in any way sympathetic to me, including my elderly parents who live next door to me, and today, our children's family doctor who has cared for them for their whole lives. After loudly questioning me about where my partner was, in front of our son, Mr. Garrido grabbed our

² Though not a part of the record before us, the family court and the parties repeatedly referred to the ongoing custody case during the DVO proceedings. For factual accuracy, we take limited judicial notice of the fact of such proceedings. We decline, however, to inject ourselves into the custody dispute as it is well beyond the scope of whether a DVO to protect Cook from Garrido was properly issued.

³ Individualized Education Program.

son by the arm and dragged him out of the exam room, because he believed my partner was there, when he was actually across town at work. Mr. Garrido was wildly looking around and shouting disparaging comments about my partner as came [*sic*] back in. He admitted to the doctor that he had called the police and the FBI in addition to the calls he's made to CPS (all of his false claims have been unsubstantiated by CPS in multiple investigations) to get us in trouble, but we haven't done anything wrong. During his tirade Mr. Garrido stated that he is going to make everything clear, that it was he who has a problem, and that he is going to murder me. He later sent an irrational message through MyChart revoking consent for the doctor to treat our son, because the doctor is "consistently uncritical" of me. Our older son has Down Syndrome and sleep apnea and a predisposition to get pneumonia. He needs to be under a doctor's care. Mr. Garrido pulled our children from therapy as well. He has been physically rough with our sons. I was scared today because I believe he will follow through on his threat and harm me. He is trying to harm our son. Mr. Garrido has admitted to being suicidal in the past and I worry for all of our safety as I see him detaching from reality. I am afraid he is delusional because a babysitter he hired for this Saturday contacted me and sent screen shots showing that he told her that neither child "needs much supervision," that our son has Down Syndrome, but "doesn't need any special care or attention." He is endangering our children by trying to leave them with someone without giving instructions for our older son's medical care/use of oxygen at night. I am doing everything I can to protect and shield the children from his abuse but I need help because he attacks me constantly and is trying to alienate the children from me as well with constant negative talk about myself and my partner. Please help us.

This matter was first called for a final evidentiary hearing on Cook's petition on December 14, 2023. Both Cook and Garrido appeared *pro se*. After Cook presented her case, Garrido noted that Cook was seeking the petition on behalf of the children as well as herself, and he requested the family court to appoint a guardian *ad litem* (GAL) to represent the children. The family court agreed that it was appropriate to do so. After appointing the GAL, the family court indicated that it would pass the hearing to January 25, 2024, to allow the GAL time to get up to speed on the matter. The family court then admonished Garrido that, in the meantime, he should not go to Cook's home and cause a scene like she had witnessed him doing on a prior video. Garrido retorted that if the court had actually watched the video, it would have seen Cook's paramour threatening him. When the family court told Garrido that the video did not contain a threat against him, Garrido became very aggressive and emotional. Garrido persisted in arguing with the family court. After the family court asked Garrido if it had to put him in jail to get him to calm down, he responded "if that's what I have to do to protect my kids, then alright." At that point, a courtroom security officer went and stood behind Garrido. Thereafter, the family court adjourned the matter with instructions for the parties to work with the GAL and to reappear on January 25, 2024, to complete the hearing.

On that date, Cook, Garrido, Garrido's newly retained counsel, and the GAL appeared before the family court.⁴ Presumably because the GAL had not been present at the prior hearing, the family court elected to begin the hearing anew. It first read Cook's petition into the record. The family court then asked Cook whether the petition was correct and whether she wanted to adopt it as her testimony. Cook answered affirmatively to both questions. On cross examination, Cook admitted that her recollection of the rest of the day in question was challenging but maintained that she did recall Garrido threatening her in the doctor's office that day. The family court subsequently asked Cook whether she was in fear of Garrido and whether she believed Garrido was capable of carrying out his threat to kill her. Cook responded that she believed so because Garrido becomes unhinged when discussing her paramour as he had done during the December 14th hearing. Cook did not call any additional witnesses.

For his part, Garrido denied threatening Cook at the doctor's office. Rather, he characterized his interaction with Cook as a conversation. According to Garrido, while he was in the examination room with Cook and their son, he asked Cook whether her paramour was present at the appointment. Garrido testified that after Cook refused to answer his question, he took his son by the hand and the two left the examination room. He explained that when he realized Cook's paramour

⁴ A different family court judge presided over the January 25th hearing.

was not present in the waiting room, he returned to the examination room with the child. Garrido testified that he currently sees a therapist to cope with stress related to his children's living situation and previously received some treatment for episodic depression.⁵

After the conclusion of the hearing, the court entered an order against Garrido on Cook's behalf. It declined to enter an order on behalf of the children.

The order stated:

[Cook] adopted pet. as sworn testimony. Ct makes pet part of record. [Cook] felt threatened by [Garrido]. Threats to kill + to murder her + is scared he is capable of carrying out those threats. Child present at time at time [*sic*] of incident at doctors + witnessed the incident. [Cook] states she is intimidated by [Garrido] and worried about being around him b/c of his outbursts + m/h hx. [Garrido] testified only a conversation happened at the dr. appt. Ct finds [Cook] more credible as it believes [Garrido] does have tendency to react aggressively and emotionally when discussing [Cook's] paramour. Ct finds [Garrido] did physically threaten [Cook] and is likely to again if an order is not entered. While Ct is concerned about this incident happening in presence of one of the children, it finds no violence or threat thereof against the child. DVO (3-years) entered on behalf of [Cook] only. GAL recommends dad to have contact.^[6]

⁵ In the prior hearing, Garrido testified that he had never been diagnosed with a mental-health issue.

⁶ The standard terms of the DVO were modified to allow Garrido and Cook to continue child exchanges, and to allow Garrido to come to Cook's front porch to drop off medical equipment for one of the children.

Garrido now brings this appeal.⁷

II. ANALYSIS

Domestic violence orders are a statutory creation and their issuance is governed by Kentucky Revised Statute (KRS) 403.740. That provision, in relevant part, reads: “Following a hearing ordered under KRS 403.730, if a court finds by a preponderance of the evidence that domestic violence and abuse has occurred and may again occur, the court may issue a domestic violence order[.]” KRS 403.740(1). “The preponderance of the evidence standard is satisfied when sufficient evidence establishes the alleged victim was more likely than not to have been a victim of domestic violence.” *Caudill v. Caudill*, 318 S.W.3d 112, 114 (Ky. App. 2010). On appeal, we review the family court’s factual findings for clear error, and its legal conclusions for abuse of discretion. *Id.* at 114-15.

The first requirement for a DVO is an act of domestic violence. Domestic violence includes “the infliction of fear of imminent physical injury, serious physical injury, sexual abuse, strangulation, or assault between family members or members of an unmarried couple.” KRS 403.720(2)(a). In this case,

⁷ We note that individuals proceeding *pro se* are required to follow all of the rules of this Court, as all attorneys are expected to do. *Watkins v. Fannin*, 278 S.W.3d 637, 643 (Ky. App. 2009). That being said, *pro se* litigants are afforded some leniency. *Beecham v. Commonwealth*, 657 S.W.2d 234, 236 (Ky. 1983). Despite various shortcomings, the parties’ briefs are coherent enough to allow this Court to conduct a meaningful review. In light of the parties’ substantial compliance and given the serious nature of domestic violence proceedings, we review this appeal on its merits. *See Wright v. Wright*, 181 S.W.3d 49, 52 (Ky. App. 2005).

Cook alleged Garrido committed an act of domestic violence against her when he threatened to kill her while the family was inside a doctor's examination room. She further testified that Garrido's threat caused her to be afraid for her safety because she believed he was capable of carrying out the threat against her.

The family court pointed out that the parties gave conflicting testimony on the events that transpired at the doctor's office. As a result, the family court had to make a credibility determination. On balance, the family court determined that Cook was more credible, and it accepted her account as true. Garrido has merely pointed out reasons why he believes the family court erred in choosing to believe Cook instead of him. However, assessing the credibility of the witnesses before it is the unique prerogative of the family court, and we will not second guess or disturb its decision based on mere disagreement. *Bailey v. Bailey*, 231 S.W.3d 793, 796 (Ky. App. 2007) ("A family court is entitled to make its own decisions regarding the demeanor and truthfulness of witnesses, and a reviewing court is not permitted to substitute its judgment for that of the family court, unless its findings are clearly erroneous.").

Thus, we must accept the family court's factual determination that Garrido threatened to kill Cook while the two were in the doctor's office with their child. Considering the context in which Garrido made the statement at issue, it was sufficient to constitute a serious threat of physical harm. *See Gibson v.*

Campbell-Marletta, 503 S.W.3d 186, 191 (Ky. App. 2016) (“[T]he text messages reflect that when Shelby texted Michael that she was at his house to pick up the shoes, he stated that she had no right to be on his property and that he would shoot her if she ever came back. In the context of two parents co-parenting their son, this is an imminent threat of domestic violence.”).

The family court also determined that, unless restrained, Garrido was likely to commit another act of domestic violence against Cook. To this end, the family court noted that Garrido became aggressive and emotional whenever he discussed Cook’s paramour. Cook testified to Garrido’s general behavior and tendency to act irrationally when discussing her paramour. Additionally, while Garrido remained calm during the second hearing, the record from first hearing bears out the family court’s finding. Garrido was argumentative, if not openly hostile, toward the family court, especially when discussing Cook’s paramour. Garrido’s past behavior, as testified to by Cook and observed by the family court, provided sufficient evidence for the family court to conclude that Garrido was likely to repeat such behavior in the future.

Lastly, we reject Garrido’s argument that the DVO is unnecessary because there was already an order in the custody case limiting the parties’ communications with one another. The existence of the custody order did not preclude the family court from entering a DVO. *Lazar v. Lazar*, 678 S.W.3d 472,

476 (Ky. App. 2023) (holding that an agreed mutual retraining order issued in a dissolution action did not preclude entry of DVO even though terms were similar). In fact, as recognized in *Lazar*, a DVO provides broader protection than an ordinary civil order because it can be enforced criminally. *Id.*

III. CONCLUSION

For the foregoing reasons, we affirm the Jefferson Circuit Court's entry of a DVO in favor of the appellee, Robin Cook.

ALL CONCUR.

BRIEFS FOR APPELLANT:

Jesse Garrido, *pro se*
Louisville, Kentucky

BRIEF FOR APPELLEE:

Robin Cook, *pro se*
Louisville, Kentucky