

Commonwealth of Kentucky
Court of Appeals

NO. 2025-CA-0499-ME

AUNDRIA MCCLAIN

APPELLANT

v. APPEAL FROM JEFFERSON FAMILY COURT
HONORABLE DERWIN L. WEBB, JUDGE
ACTION NO. 24-D-504599-002

DONALD TAYLOR

APPELLEE

OPINION
VACATING AND REMANDING

** ** *

BEFORE: ECKERLE, McNEILL, AND MOYNAHAN, JUDGES.

MOYNAHAN, JUDGE: Aundria McClain (“McClain”) appeals from the Jefferson Family Court’s issuance of a domestic violence order (“DVO”). Because the record shows that McClain was not provided proper notice of the hearing which preceded the issuance of the DVO, we vacate and remand.

I. BACKGROUND

In January 2025, Appellee Donald Taylor (“Taylor”) sought an order of protection from McClain, his mother. Taylor’s petition stated that he had been attacked by McClain. The Jefferson Family Court granted an emergency protective order to Taylor and issued a summons requiring McClain to appear for a hearing on whether a DVO should be issued on February 11, 2025. It is undisputed that summons was properly served upon McClain.

However, the Family Court was closed due to inclement weather on February 11. The presiding judge issued an order stating: “Court closed due to weather[.] CC [presumably “case continued”]: 2/25/25 @ 9:30 am[.]” We shall refer to that order as “the rescheduling order.”

Taylor appeared at the February 25 hearing, but McClain did not. The Family Court asked Taylor if he adopted the allegations in his petition. Taylor answered affirmatively. The Family Court then read the petition aloud and said it would be granted. The hearing lasted less than three minutes.

That same date, the Family Court issued a DVO on Taylor’s behalf. Soon thereafter, McClain filed a form motion to amend the DVO, which simply asked the Family Court to “[r]eschedule court date[.]” At the beginning of the eventual hearing on McClain’s motion, at which Taylor did not appear, the Family Court stated that it assumed McClain had not been present for the February 25

hearing because she had not known the hearing would be held on that date.

Included within McClain's response was an assertion that she "did not receive notice for when the next court date was." VR 3/11/25 at 12:52:50 *et seq.*

McClain admitted she had received a voicemail from an unknown number after calling "someone" to see if the DVO hearing had been rescheduled. However, McClain stated that voicemail did not show on her phone until after the rescheduled hearing had occurred because it takes days, or weeks, for voicemails to appear on her phone. The Family Court then said it had an "issue" if McClain was asserting she had not received notice of the February 25 hearing and took McClain's motion under advisement.

A discussion on the best way to contact McClain then ensued, during which someone, presumably a court employee, stated she had called McClain and left a voicemail prior to the February 25 hearing. The person did not specify the date she left the voicemail or the precise contents thereof. McClain again acknowledged having gotten a call from an unknown number, but said she did not answer the call because she did not answer calls from unknown numbers.

The Family Court later tersely denied without explanation McClain's motion to set aside the DVO. The order added that "any other motions can be sent to [the] Court of Appeals." McClain then filed this appeal, which is expedited under the terms of Kentucky Rule of Appellate Procedure ("RAP") 30(E).

II. ANALYSIS

The only issue properly before us is whether McClain had adequate notice of the rescheduled hearing. Before we address the merits of that issue, however, we first resolve two antecedent concerns. First, Taylor did not submit an appellee brief. “We have discretion to decide the way to respond to [Taylor’s] failure to file a brief.” *Hawkins v. Jones*, 555 S.W.3d 459, 461 (Ky. App. 2018). We have elected to not penalize Taylor, who was proceeding *pro se* before the Family Court, but “strongly suggest that the best practice is to file an appellee brief[.]” *Id.*

Second, McClain asserts she is appealing from the denial of her *pro se* motion to set aside the DVO. Though McClain did not expressly list it as such, her motion to set aside the DVO was substantively a motion to alter, amend, or vacate a judgment under Kentucky Rule of Civil Procedure (“CR”) 59.05. However, we lack jurisdiction over the denial of a CR 59.05 motion because an order denying such a motion is interlocutory. *See Ford v. Ford*, 578 S.W.3d 356, 365 (Ky. App. 2019). Instead, “the appeal is from the underlying judgment, not the denial of the CR 59.05 motion.” *Id.* at 366.

Turning to the merits, generally “[w]e review the entry of a DVO for whether the trial court’s finding of domestic violence was an abuse of discretion.” *Johnston v. Johnston*, 639 S.W.3d 428, 431 (Ky. App. 2021). “The test for abuse

of discretion is whether the trial judge’s decision was arbitrary, unreasonable, unfair, or unsupported by sound legal principles.” *Goodyear Tire and Rubber Co. v. Thompson*, 11 S.W.3d 575, 581 (Ky. 2000).

“It is a fundamental principle of our jurisprudence that the minimum requirements of due process require adequate notice and a meaningful opportunity to be heard.” *P.J.H. v. Cabinet for Human Resources*, 743 S.W.2d 852, 853 (Ky. App. 1987). “Notice, to comply with due process requirements, must be given sufficiently in advance of scheduled court proceedings so that reasonable opportunity to prepare will be afforded” *Id.* (quoting *In re Gault*, 387 U.S. 1, 33, 87 S. Ct. 1428, 1446, 18 L. Ed. 2d 527 (1967) (internal quotation marks omitted)). In sum, “one of the elementary essentials of judicial proceedings [is] that notice of a hearing or trial be given or received by the parties.” *Burns v. Brewster*, 338 S.W.2d 908, 910 (Ky. 1960).

A party’s due process rights to notice and an opportunity to be heard are protected via the service requirements in CR 5.01, 5.02, and 5.03. Those civil rules apply here because there are no provisions inconsistent with them in the Kentucky Family Court Rules of Procedure and Practice (“FCRPP”), which govern DVO proceedings. See FCRPP 1(5) (“The Kentucky Rules of Civil Procedure . . . shall apply to family law cases to the extent that they are not inconsistent with these rules.”). Of course, the interpretation and construction of court rules presents

a question of law which we review *de novo*. See, e.g., *Cabinet for Health and Family Services v. D.W.*, 680 S.W.3d 856, 860 (Ky. 2023).

CR 5.01 provides in relevant part that “[e]very order required by its terms to be served . . . shall be served upon each party except those in default for failure to appear.” McClain was not in default and the rescheduling order’s terms made it an order which was required to be served since parties must receive notice of a hearing.

Therefore, we must next examine how the rescheduling order was required to be served upon McClain. The answer is provided by CR 5.02(1), which states in relevant part:

service . . . upon a party shall be made by delivering a copy to the . . . party or by mailing it to the . . . party at the last known address of such person; or, if no address is known, by leaving it with the clerk of the court. Service is complete upon mailing unless the serving party learns or has reason to know that it did not reach the person to be served. Delivery of a copy within this rule means handing it . . . to a party; or leaving it at the office of the . . . party with the person in charge thereof; or, if there is no one in charge, leaving it in a conspicuous place therein; or, if the office is closed or the person to be served has no office, leaving it at his [or her] dwelling house or usual place of abode with some person of suitable age and discretion then residing therein.

The other methods of service under CR 5.02, such as electronic service, do not apply here. Therefore, under CR 5.02, the two proper methods for serving the

rescheduling order upon McClain were mailing it to her last known address or delivering a copy of the order to her. Neither occurred.¹

Though not discussed by McClain’s brief or the Family Court, our review of the record revealed that the circuit court clerk’s case history contains this note regarding the rescheduling order: “**NOE [notice of entry] to All Counsel of Record and Parties Not Represented by Counsel. ORDER OF CONTINUANCE HAND DELIVERY[.]**” However, there is nothing else in the record to support the notation that the rescheduling order was hand delivered to McClain. For example, there is no signed return of service form, or any other proof of service permitted in CR 5.03. Moreover, the clerk’s notation regarding hand delivery was never discussed at either the DVO hearing or the hearing on McClain’s motion to vacate the DVO.

On the contrary, McClain stated without contradiction at the hearing on her motion to vacate that she lacked prior knowledge of the rescheduled hearing

¹ We are perplexed by McClain’s erroneous assertion on page seven of her brief that “[t]he Kentucky Family Court Rules of Procedure and the Kentucky Domestic Violence Protocol explicitly mandate that courts ‘ensure personal service of hearing notices’ and prohibit proceeding ‘without trying service.’ FCRPP 8, Kentucky Domestic Violence Protocol.” FCRPP 8 does not pertain to DVOs. And neither does the Jefferson Family Court’s local rules nor the Jefferson County Domestic Violence Protocol contain the quoted language. See <https://www.kycourts.gov/Courts/Rules%20of%20Practice/C30D30DVPROTOCOL.pdf> (last visited October 21, 2025); <https://www.kycourts.gov/Courts/Rules%20of%20Practice/C30FAMILYRULES.pdf> (last visited October 21, 2025). We have leniently elected to not impose sanctions upon McClain’s counsel, but **strongly** caution counsel to avoid making similar misstatements in the future.

date. Indeed, the Family Court itself stated at the very beginning of the hearing that it assumed McClain had not known about the rescheduled hearing. Therefore, we decline to blindly accept the otherwise unsupported hand delivery notation in the clerk's case history.

In short, the only notice of the rescheduled hearing which the record shows McClain received was the voicemail message. We do not know the date that voicemail was left, its precise contents, or even the identity of the person who left it. Regardless, service via voicemail is facially insufficient under the plain language of CR 5.02. That conclusion aligns with the fundamental principle that a court speaks through its written decisions. *Charalambakis v. Asbury University*, 488 S.W.3d 568, 582 n.8 (Ky. 2016).

We agree with McClain that she did not receive proper notice of the rescheduled hearing. The Family Court thus abused its discretion by holding a hearing on Taylor's DVO petition, and then granting Taylor's petition afterwards. *Hawkins*, 555 S.W.3d at 461-62 (stressing that a DVO "is serious with significant long-term consequences" and thus "[d]ue process is not satisfied when a DVO is granted without a full hearing . . .").

The holding of the fatally flawed hearing, and the issuance of an order pursuant to that flawed hearing, were fundamentally unfair and unsupported by sound legal principles. "[O]ne of the elementary essentials of judicial proceedings

[is] that notice of a hearing or trial be given or received by the parties[,]” *Burns*, 338 S.W.2d at 910, and “the minimum requirements of due process require adequate notice and a meaningful opportunity to be heard.” *P.J.H.*, 743 S.W.2d at 853. *See also* 28 C.J.S. *Domestic Abuse and Violence* § 27 (2025) (“Under the due process clause, a respondent in a domestic abuse proceeding must be given adequate notice of the proceedings which is sufficient to allow the individual to prepare a defense.”). The errors cannot reasonably be deemed to be harmless since they resulted in the issuance of a DVO against McClain without her having had the opportunity at the hearing to challenge the assertions of Taylor’s DVO petition.

Finally, we note that this case shares some superficial similarities with *Thurman v. Thurman*, 560 S.W.3d 884 (Ky. App. 2018). We vacated a DVO in *Thurman* because the respondent was not within the Family Court’s jurisdiction because he had never been properly served with the DVO petition in the manner required under the DVO statutes. *Id.* at 886-87. Here, it is undisputed that the initial petition was properly served upon McClain, and she was therefore properly within the jurisdiction of the Family Court. Therefore, the jurisdictional analysis in *Thurman* is inapplicable here.

In sum, McClain was not provided adequate notice of the rescheduled DVO hearing. The DVO issued pursuant to that hearing therefore must be vacated regardless of the evidence presented at that hearing. The matter is remanded to the

Family Court for fresh proceedings on Taylor's petition. On remand, assuming Taylor still wishes to go forward with his DVO petition, the Family Court must ensure the parties receive proper notice of a new evidentiary DVO hearing. After conducting the hearing, the court must then issue a new decision which either grants or denies Taylor's petition. Because that forthcoming decision must be based on the evidence presented at a future hearing, we take no position on the merits of Taylor's petition.

III. CONCLUSION

For the foregoing reasons, the February 25, 2025, domestic violence order granted on behalf of Donald Taylor against Aundria McClain is vacated and the case is remanded with instructions to conduct forthwith an evidentiary hearing on Taylor's petition and to then issue a new decision resolving the petition.

ALL CONCUR.

BRIEF FOR APPELLANT:

NO BRIEF FOR APPELLEE.

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