

Commonwealth of Kentucky
Court of Appeals

NO. 2026-CA-0213-ME

HOWARD GORBATY

APPELLANT

v. APPEAL FROM MCCRACKEN CIRCUIT COURT
HONORABLE DEANNA WISE HENSCHER, JUDGE
ACTION NO. 16-D-00005-003

MELISSA PERSHA

APPELLEE

OPINION
AFFIRMING

** ** *

BEFORE: ECKERLE, L. JONES, AND KAREM, JUDGES.

KAREM, JUDGE: Howard Gorbaty (“Gorbaty”) appeals from an Interpersonal Protective Order (“IPO”) entered against him by the McCracken Family Court on behalf of Melissa Persha (“Persha”). Gorbaty argues that the order was not supported by sufficient evidence. Upon careful review, we affirm.

FACTUAL AND PROCEDURAL BACKGROUND

In February 2016, the McCracken Family Court entered an IPO on behalf of Persha (then Rodriguez), against Gorbaty, for stalking. The order was affirmed by this Court on direct appeal, with the opinion stating in pertinent part as follows:

Melissa Rodriguez filed a petition for an order of protection in McCracken Family Court. Seven days before Rodriguez filed the petition, Gorbaty came out of his home, approached Rodriguez's residence, and shot a gun twice at Rodriguez and a friend. Rodriguez alleged in her petition:

Over a year ago I asked him repeditively [repeatedly] to leave me alone. During this time [,] he sent me multiple texts, fb [Facebook] messages and phone calls demanding things, threatening me. Most days he comes outside when I come and go and walks to me to harass me . . . He was convicted last spring of harassing communications. I believe he has my phone pinged and has cameras pointed towards my house constantly. Today he is out on bond for shooting at me and no words describe the terror I'm in now.

A temporary interpersonal protective order (TIPO) was entered against Gorbaty. The order provided that Gorbaty be restrained from going within 500 feet of Rodriguez.

A hearing was held on February 3, 2016. The family court noted in its findings that Rodriguez testified that Gorbaty stands at his window and fondles himself; is constantly watching her; and, every time she walks

outside he is there. He yells out private and personal things about her. Because he is constantly watching her, Rodriguez is fearful and has called the police numerous times. Gorbaty did not testify.

At the conclusion of the hearing, based on the testimony and evidence, the family court entered findings of fact and granted Rodriguez an interpersonal protective order (IPO). The order is effective until February 3, 2019, and provides that Gorbaty is to remain at least 500 feet away from Rodriguez, and the order specifically lists her home, workplace, and the Community Kitchen for him to remain 500 feet away.

...

Here, the family court found, by a preponderance of the evidence, that Gorbaty's behavior satisfied the elements of stalking. Rodriguez testified that Gorbaty intentionally stalked her and made explicit and implicit threats, which placed her in reasonable fear of sexual contact, physical injury, or death. She noted that constantly Gorbaty watched her, walked past her house an inordinate amount of times, yelled personal things at her, fired shots toward her apartment while she and a friend were outside; and finally, she stated she was terrified of him. In fact, Gorbaty fired a gun two times at Rodriguez and a friend. Usually, someone firing a weapon at another puts one in fear of physical injury or death. Further, the police were called for that incident and many more.

Gorbaty v. Rodriguez, No. 2016-CA-000295-ME, 2017 WL 3669486, *1–2 (Ky. App. Aug. 25, 2017).

After this IPO expired in 2019, Persha sought another order of protection, alleging that, shortly before the IPO expired, Gorbaty was lingering

around her residence and had showed up at her workplace, where she is employed as a hairdresser. On the day the IPO expired, he called her at work to request a haircut. The court entered a TIPO, which was subsequently dismissed without prejudice because Persha failed to attend the IPO hearing.

On December 23, 2025, Persha filed a motion for an order of protection against Gorbaty. Persha alleged that she came home at 3:30 in the afternoon on December 12, 2025, to find Gorbaty approximately fifteen feet into her yard with his dog. She described a “horrible confrontation” that ensued between them. She alleged that he cussed her and accused her of having him falsely arrested. He also told her he wanted to “congratulate” her on her gun charges. Persha had incurred criminal charges for possession of a firearm and had been sentenced two days before, on December 10, 2025. Gorbaty had been present in the courtroom at her sentencing. According to Persha, she only had the weapons because her home had been vandalized in an attempted home invasion. The petition alleged that Gorbaty had a lifelong interest in harassing and frightening her and that she was genuinely in fear for her life.

A TIPO was entered, and the matter was transferred to the family court, which conducted a lengthy hearing on February 4, 2026. Gorbaty and Persha were the only witnesses. Persha showed a video recording on her phone of the confrontation she had with Gorbaty when he entered her yard with his dog.

The court found in part as follows:

Mr. Gorbaty was previously found to have stalked Ms. Persha, after he shot a gun at her home. An IPO was entered for three years in 2016 following this incident. He is aware she doesn't want any contact with "her stalker," yet he shows up at her court hearing AND THEN shows up in HER YARD and raises his voice. The Court finds that his behavior would make a reasonable person with their history feel threatened. Just because he doesn't perceive himself and his bizarre behavior to be threatening doesn't mean it isn't considered threatening and causing his victim fear.

The family court granted the IPO making it effective until February, 4, 2027. The IPO ordered Gorbaty not to go on Persha's property or within 500 feet of her property on her side of the street. This appeal by Gorbaty followed.

STANDARD OF REVIEW

"A court may enter an IPO if it finds 'by a preponderance of the evidence that dating violence and abuse, sexual assault, or stalking has occurred and may again occur[.]'" *Jones v. Jones*, 617 S.W.3d 418, 423 (Ky. App. 2021) (quoting Kentucky Revised Statute ("KRS") 456.060(1)). "The preponderance of the evidence standard is met when sufficient evidence establishes the alleged victim was more likely than not to have been a victim of dating violence and abuse, sexual assault, or stalking." *Id.* (internal quotation marks and citations omitted).

When we review a decision of the family court, “the test is not whether the appellate court would have decided it differently, but whether the findings of the family court are clearly erroneous, whether it applied the correct law, or whether it abused its discretion.” *B.C. v. B.T.*, 182 S.W.3d 213, 219–20 (Ky. App. 2005). A trial court abuses its discretion when its decision is “arbitrary, unreasonable, unfair, or unsupported by sound legal principles.” *Commonwealth v. English*, 993 S.W.2d 941, 945 (Ky. 1999) (citations omitted).

ANALYSIS

The parties agree that the basis for entering the IPO was Persha’s allegation of stalking.

[F]or an individual to be granted an IPO for stalking, he or she must at a minimum prove by a preponderance of the evidence that, an individual intentionally engaged in two or more acts directed at the victim that seriously alarmed, annoyed, intimidated, or harassed the victim, that served no legitimate purpose, and would have caused a reasonable person to suffer substantial mental distress, and that these acts may occur again. Additionally, the individual must prove that there was an implicit or explicit threat by the perpetrator that put the victim in reasonable fear of sexual contact, physical injury, or death.

Halloway v. Simmons, 532 S.W.3d 158, 162 (Ky. App. 2017) (citations omitted).

Gorbaty argues that there was insufficient evidence of an explicit or implicit threat of sexual contact, physical injury, or death that would create fear in a reasonable person. He contends the family court erred in citing the 2016

incident, when Gorbaty fired a gun at Persha and her friend, as evidence of such a threat. At the IPO hearing, Gorbaty testified that he did not intend to shoot at Persha, but at her companion. He contends that the family court should have accepted this testimony as conclusive proof that the 2016 incident could not have elicited fear on Persha's part.

“[T]he proof sufficient for the issuance of one DVO can be considered as proof for a subsequent DVO.” *Walker v. Walker*, 520 S.W.3d 390, 392 (Ky. App. 2017). In its 2017 opinion affirming the entry of the first IPO, the Court of Appeals plainly stated that Gorbaty fired a gun twice at Persha and her friend. This statement has become the law of the case, which “is an iron rule, universally recognized, that an opinion or decision of an appellate court in the same cause is the law of the case for a subsequent trial or appeal[.] That doctrine is the mechanism by which matters once litigated and finally determined remain so.” *TECO Mechanical Contractor, Inc. v. Kentucky Labor Cabinet*, 474 S.W.3d 153, 158 (Ky. App. 2014) (internal quotation marks and citation omitted). Thus, as a matter of law, the family court did not abuse its discretion in relying on the factual account of the shooting found in the appellate opinion. In any event, the court was free to disregard Gorbaty's self-serving testimony about the shooting because “judging the credibility of witnesses and weighing evidence are tasks within the

exclusive province of the trial court.” *Moore v. Asente*, 110 S.W.3d 336, 354 (Ky. 2003) (citation omitted).

As further proof that Persha could not have been placed in reasonable fear by his behavior, Gorbaty points out that she failed to seek an IPO after obtaining a TIPO in 2019, and she felt safe enough in 2020 to relocate to a home close to his own. He contends that there was simply no explicit or implicit threat of sexual contact, physical injury, or death, as required by statute, and that any threat that may have existed had dissipated. This argument might be more credible if he had not attended her sentencing on the firearms charge and then trespassed on her property with his dog. Rather than leaving when she confronted him, he chose to engage in a verbal altercation—and admitted to doing so. As the family court’s order aptly stated, “his behavior would make a reasonable person **with their history** feel threatened.” (Emphasis added.) These two recent incidents, when viewed in the context of his actions over the preceding nine years, fully support the family court’s finding that his behavior represented a threat that placed Persha in reasonable fear of serious physical injury or death.

CONCLUSION

For the foregoing reasons, the IPO entered by the family court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

Steven Ellingsworth
Paducah, Kentucky

BRIEF FOR APPELLEE:

Katina B. Miner
Bowling Green, Kentucky