RENDERED: NOVEMBER 6, 2026; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2026-CA-0732-ME

CLARA HORNBUCKLE — APPELLANT

v.

APPEAL FROM FAYETTE FAMILY COURT
HONORABLE TIFFANY YAHR, JUDGE
ACTION NO. 26-D-00159-001

DANIELLE E. LETO — APPELLEE

OPINION REVERSING
AND VACATING

** ** ** ** **

BEFORE: ACREE, CETRULO, AND KAREM, JUDGES.

CETRULO, JUDGE: This is an appeal from an interpersonal protective order ("IPO") granted in favor of appellee, Danielle E. Leto ("Leto"), against appellant, Clara Hornbuckle ("Hornbuckle"). The basis for granting the IPO was that stalking had occurred and may occur again if the IPO was not in place to prevent it. On appeal, Hornbuckle argues that the family court erred in finding that the

elements of stalking as defined by KRS[1] 508.130 and KRS 508.150 were met. We agree with Hornbuckle that there was insufficient evidence presented in this case to support granting of the IPO by the Fayette Family Court.

FACTUAL BACKGROUND

The petition filed by Leto stated:

> At 2:30AM, February 9, 2026, Clara Hornbuckle attacked and strangled me at my job. I was sitting at a table when she snuck through the door, came up behind me and put me in a chokehold. There have been times Clara has drove past my apartment. I have her blocked on every social media account and her phone number. She has changed her number and texted me months after having her blocked. Her and I have not been friends for over a year and even after having her blocked and ignoring her, she has been stalking, harassing, and threatening me. I fear her anger and resentment towards our friendship will not fade. After this recent attack, it is clear further intervention is needed.

After issuing an emergency protective order, the family court conducted an evidentiary hearing on the petition on April 1, 2026. At the hearing, Leto presented a screenshot of a text message and a video clip depicting the physical altercation on February 9, providing specific testimony and evidence as to these two incidents. While she stated she believed she saw Hornbuckle drive by her home one time in November 2025, there was no other testimony about that alleged incident nor any other claim of stalking. Under cross-examination by

[1] Kentucky Revised Statute.

counsel, Leto acknowledged that Hornbuckle did not threaten her verbally or via the single text that she presented to the court.

Hornbuckle did not deny that the text was sent by her or that she came up behind Leto and dragged her several steps backwards at the Cheetah Gentleman's Club on February 9, 2026.

In its written order following the hearing, the family court set forth the standard and elements required for entry of an IPO:

> For 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, 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. KRS 508.130 and KRS 456.060. 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. KRS 508.150.

Based on that summary of the law, the court made its findings of fact and found the necessary basis for the granting of an IPO, as follows:

> 1) Hornbuckle reached out to Leto on an alternate phone number four months after Leto had requested no further contact;
>
> 2) Four months after the text message, Hornbuckle had physically attacked Leto at her place of work; and
>
> 3) The assault or physical attack itself amounted to an explicit threat under KRS 508.150.

The family court then entered a three-year protective order. Hornbuckle filed a timely motion to alter, amend, or vacate, which the court denied, and this appeal followed. Again, Hornbuckle does not deny that the two acts occurred, but argues that Leto did not prove the continuity of purpose required by statute or that she was placed in reasonable fear by each incident. On appeal, Hornbuckle further points out that Leto did not testify that she was afraid of Hornbuckle. Finally, Hornbuckle argues that the family court erred in finding that an assault amounts to an explicit threat.

Leto chose not to file a brief on appeal. RAP[2] 31(H)(3) provides this Court with discretion to impose penalties on the appellee for failure to timely file an appellee brief, which include the options to "(a) accept the appellant's statement of the facts and issues as correct; (b) reverse the judgment if appellant's brief reasonably appears to sustain such action; or (c) regard the appellee's failure as a confession of error and reverse the judgment without considering the merits." This Court has previously noted "that the best practice is to file an appellee brief," not only to avoid the possible imposition of penalties, but also because our review is constrained when an appellee does not respond to the appeal by filing a brief and further requires us to primarily rely upon the appellant's statement of the facts. *See*

[2] Kentucky Rule of Appellate Procedure.

Hawkins v. Jones, 555 S.W.3d 459, 461 (Ky. App. 2018). Nonetheless, we have elected to carefully review the entire record on appeal and address the merits.

STANDARD OF REVIEW

The standard of review for the trial court's factual determinations is whether they are clearly erroneous. *Reichle v. Reichle*, 719 S.W.2d 442, 444 (Ky. 1986) (citing CR[3] 52.01). Findings are not clearly erroneous if "supported by substantial evidence." *Moore v. Asente*, 110 S.W.3d 336, 354 (Ky. 2003) (citation omitted). "'[S]ubstantial evidence' is '[e]vidence that a reasonable mind would accept as adequate to support a conclusion' and evidence that, when 'taken alone or in the light of all the evidence, . . . has sufficient probative value to induce conviction in the minds of reasonable men.'" *Id.* (footnotes and citations omitted). Accordingly, when a party appeals from the entry of an IPO, we cannot disturb the findings of the family court unless they are clearly erroneous, *i.e.*, not supported by substantial evidence.

Questions of law, including statutory interpretation and application, are reviewed *de novo*. *Adamson v. Adamson*, 635 S.W.3d 72, 77 (Ky. 2021) (citing *Estate of Benton v. Currin*, 615 S.W.3d 34, 36 (Ky. 2021)).

[3] Kentucky Rule of Civil Procedure.

ANALYSIS

At the time Leto filed her petition, any person could file a petition for an IPO if they were a victim of stalking. KRS 456.010(8) (2022) defined stalking as conduct prohibited by KRS 508.140 (2000) (repealed 2026) and KRS 508.150 (1992) (repealed 2026).[4] To be entitled to an IPO based upon stalking in the second-degree, KRS 508.150, the victim must establish 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." *Halloway v. Simmons*, 532 S.W.3d 158, 162 (Ky. App. 2017) (citing KRS 508.130; KRS 456.060).

Second-degree stalking occurs when an individual "intentionally: (a) [s]talks another person; and (b) [m]akes an explicit or implicit threat with the intent to place that person in reasonable fear of: . . . (2) physical injury[.]" KRS 508.150. In turn, that statute must be read in combination with KRS 508.130 (2015) (amended 2026), which defined stalking as:

> (1) (a) To "stalk" means to engage in an intentional course of conduct:

[4] The IPO/stalking statutes were amended and in part repealed in 2026. We review the claims under the law in effect at the time of the petition.

1. Directed at a specific person or persons;

2. Which seriously alarms, annoys, intimidates, or harasses the person or persons; and

3. Which serves no legitimate purpose.

(b) The course of conduct shall be that which would cause a reasonable person to suffer substantial mental distress.

(2) "Course of conduct" means a pattern of conduct composed of two (2) or more acts, evidencing a continuity of purpose. . . .

To summarize, a victim of stalking who seeks an IPO bears the burden of proving certain elements by a preponderance of evidence. The individual charged must have 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. *Strong v. Gary*, 673 S.W.3d 77, 80 (Ky. App. 2023); *Taylor v. Fitzpatrick*, 659 S.W.3d 745, 749 (Ky. App. 2023) (citations omitted); *Halloway*, 532 S.W.3d at 162 (citing KRS 508.130; KRS 456.060). In addition to other requirements, Leto had to establish an implicit or explicit threat putting her in reasonable fear for her physical safety.

In *Strong v. Gary*, we affirmed the family court's denial of an IPO because the petitioner did not "prove two separate instances of stalking by a preponderance of the evidence." 673 S.W.3d at 80-81. In *Taylor*, we found there

was no substantial evidence that stalking had occurred where the petitioner "did not prove any specific two or more instances of behavior that would constitute stalking, as defined by KRS 508.130." 659 S.W.3d at 751. "The evidence [did] not rise to the level of a 'course of conduct' . . . which seriously alarm[ed], annoy[ed], intimidate[d], or harasse[d] the person and serve[d] no legitimate purpose and would cause a reasonable person to suffer substantial mental distress." *Id.* While this Court reviewed the extension of an IPO in *Taylor*, we noted that "[t]here was no testimony of *any* new threat that put the victim in reasonable fear of physical injury, an additional requirement of the statute." *Id.* (citing KRS 508.150; *Halloway*, 532 S.W.3d at 162).

Here, the only evidence presented was of these two acts: the single text message supposedly sent in October 2025 and the physical attack months later in February 2026. Leto, unrepresented at the hearing, did not testify to any fear of serious physical injury by Hornbuckle, nor did she did testify to any substantial mental distress.

The family court properly applied the law as it existed at the time of the hearing, and we take no issue with the court's finding that the second act, the unprovoked physical attack at Leto's place of employment, qualified as an "explicit threat." Similarly, the family court properly noted the different burden required for criminal stalking (beyond a reasonable doubt) and the IPO statutory

requirements (preponderance of the evidence). *See Miller v. Commonwealth*, 77 S.W.3d 566, 576 (Ky. 2002) (stating that it is the Commonwealth's burden in every criminal case to prove each element of a crime beyond a reasonable doubt); KRS 456.060(1). While the burden is less in an IPO case, and while we do not generally substitute our opinion for the trial judge, there must be a finding of a minimum of "two or more acts" to constitute stalking. *See* KRS 508.130(2); *Halloway*, 532 S.W.3d at 162 (citations omitted).

Leto acknowledged that she had received no other threats from Hornbuckle. The claimed earlier act, a text sent months earlier, did not rise to a level to constitute one of the two required acts. As the family court noted, the text itself did not contain any threatening language. In response to the court's questioning, Leto testified that she was not physically fearful of Hornbuckle. Rather, she stated she was more concerned about Hornbuckle's ex-husband and her other associates. Here, Leto did not provide evidence of any other threats that caused her, or any reasonable person, to be in fear of serious injury. She did not present evidence to rise to a level of a "course of conduct" as required by KRS 508.130. Leto was required to prove two separate instances of stalking by a preponderance of evidence. While she proved the actions of February 9, which the court found to be an explicit threat, she did not prove a second threat that caused her fear or would cause a reasonable person to suffer emotional distress. *See*

Strong, 673 S.W.3d at 80. Kentucky law does not support the issuance of an IPO for stalking in the absence of a finding, supported by evidence, of the making of an explicit or implicit threat placing the victim in reasonable fear of sexual contact, physical injury, or death. *See Taylor*, 659 S.W.3d at 749; *Halloway*, 532 S.W.3d at 162. While we certainly do not condone Hornbuckle's actions on February 9, 2026, the issuance of a three-year protective order holds serious ramifications that cannot be imposed without evidence of the elements required by the statutes.

CONCLUSION

For the foregoing reasons, we REVERSE the Fayette Family Court and VACATE the IPO entered herein.

ALL CONCUR.

BRIEF FOR APPELLANT:

Madeleine Marshall
Lexington, Kentucky

NO BRIEF FOR APPELLEE.