IN THE COURT OF APPEALS OF TENNESSEE

EASTERN SECTION

FILED

April 24, 1997

Cecil Crowson, Jr.
Appellate Court Clerk

CAROLYN MARIE DRAKE,	)	C/A NO. 03A01-9610-CV-00312
	)	
Petitioner-Appellee,	)	HAMILTON CIRCUIT
	)	
v.	)	HON. ROBERT M. SUMMITT,
	)	JUDGE
DAVID CARL DRAKE,	)	
	)	VACATED AND REMANDED
Respondent-Appellant.	)	WITH INSTRUCTIONS

HUGH P. GARNER, GARNER, LEWIS & PRICKETT, Chattanooga, for Petitioner-Appellee.

CHARLES J. GEARHISER and MYRLENE R. MARSA, GEARHISER, PETERS, LOCKABY & TALLANT, PLLC, Chattanooga, for Respondent-Appellant.

OPINION

Franks. J.

Petitioner and Respondent are sister and brother, and the Trial Court issued an order of protection in response

to the petition filed, following an abbreviated trial.

On appeal, respondent insists the Trial Court did not have jurisdiction pursuant to Tennessee Code Annotated §36-3-601, *et seq.*, or that the Court refused to permit respondent to present his evidence.

Petitioner, in her petition for an order of protection, alleged that there was a history of verbal abuse and extreme anger on the part of respondent before the incident giving rise to the petition. However, at trial, the Trial Judge refused to allow any evidence except that petitioner and her sister came from Nashville to visit her father, and was in the process of operating a video camera when respondent seized the camera, pushed her backwards and removed the film from the camera. Respondent was only permitted to testify to his version of these acts, and that he owned the property where the incident occurred.

The statute sets forth who may apply for the relief provided at T.C.A. §36-3-602, i.e., ?any and all who have been subjected to or are threatened with abuse by a present or former adult, family or household member may seek relief. . .?. An abuse is defined as ?inflicting or attempting to inflect physical injury on an adult by other than accidental means, physical restraint, or malicious damage to the personal property of the abused party.? T.C.A. §36-3-601(1). T.C.A. §36-3-601(4)(c) sets forth that ?family or household members? include ?persons related by blood . . .?.

The Trial Judge's action, in refusing to permit both parties to offer all relevant evidence as to the background

and the nature and circumstance of the parties,[1] and the circumstances surrounding the incident, requires that the judgment be vacated and the cause remanded for a trial on the merits. The Trial Court is directed to permit the parties to offer all relevant evidence on whether the statute is applicable to those facts as determined and whether a preponderance of the evidence requires the issuance of an order of protection. Also, the Trial Court is directed to give the case priority on remand.

The cost is assessed one-half to each party and the cause remanded for further proceedings consistent with this opinion.

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Herschel P. Franks, J.

CONCUR:

_____
Houston M. Goddard, P.J.

_____
Charles D. Susano, Jr., J.

[1]E.g., Respondent's representation that ?they have not been residents of the same household for more than 20 years? is not in evidence.