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Clerk of the
Appellate Courts

IN THE COURT OF APPEALS OF TENNESSEE
AT KNOXVILLE
August 17, 2022 Session

KORRIE DULANEY v. AIMEE CHICO

**Appeal from the Circuit Court for Knox County
No. 152940 Gregory S. McMillan, Judge**

No. E2022-00047-COA-R3-CV

The appellant in this case challenges the trial court’s entry of an order of protection against her. She argues that an order of protection should not issue when the sole incident for which the appellee sought the order of protection occurred more than a year and a half before appellee filed the petition for an order of protection. Under the circumstances of this case, we agree with the appellant and reverse the judgment of the trial court.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court Reversed

KRISTI M. DAVIS, J., delivered the opinion of the Court, in which D. MICHAEL SWINEY, C.J., and JOHN W. MCCLARTY, J., joined.

Joshua Hedrick, Knoxville, Tennessee, for the appellant, Aimee C. Chico.

Korrie M. Dulaney, Knoxville, Tennessee, Pro Se.¹

OPINION

BACKGROUND

The material facts in this case are undisputed. In the summer of 2019, Korrie M. Dulaney (“Ms. Dulaney”) and Aimee C. Chico (“Ms. Chico”) became involved in a romantic relationship and began living together. On March 5, 2020, Ms. Dulaney returned home from a friend’s house and brought some food. Ms. Chico took the food from Ms. Dulaney, slammed her against the wall, and hit her wrist against the wall to make her drop her car keys. Ms. Chico hid Ms. Dulaney’s car keys, wallet, and phone to prevent Ms. Dulaney from leaving the premises. The parties continued to reside together for the next nineteen months.

¹ Ms. Dulaney did not file a brief or participate in oral argument in this appeal.

On November 12, 2021, Ms. Dulaney filed a petition for order of protection (the “petition”) against Ms. Chico in the Knox County Fourth Circuit Court (the “trial court”), relating the events that transpired on March 5, 2020, and stating: “I am scared [Ms. Chico] will hurt me when she finds out I want to leave.” The trial court entered a temporary (ex parte) order of protection the same day. Following two bridging orders extending the temporary order of protection, the matter was tried on December 16, 2021.

At trial, Ms. Dulaney testified² that after the March 5, 2020 incident, “physical violence did not happen again but emotional abuse continued.” She acknowledged that in May 2021, she and Ms. Chico jointly entered into a representation agreement with a real estate broker to help them find a house. Ms. Dulaney also admitted that she gave Ms. Chico a handwritten card in September 2021, congratulating her on being sober for two years and stating, “I am forever thankful I got the opportunity to watch you grow and blossom into the amazing person you are today. . . . I hope you are as proud of yourself as I am. I love you forever and always.”

Ms. Dulaney’s sole witness, Mary Fryant, testified by videoconference. Ms. Fryant described a video call with Ms. Dulaney in February 2021, in which she could see Ms. Chico “in the background slamming cabinet doors and throwing dishes in the sink.” Ms. Fryant said that Ms. Dulaney “was crying and upset” but did not want to get help or call the police because she could leave if she wanted to. Finally, Ms. Fryant stated that there were incidents of violence between the parties in 2021. Ms. Dulaney interrupted Ms. Fryant’s testimony and repeated her earlier statement that no violence occurred after March 5, 2020.

After Ms. Dulaney rested her case, counsel for Ms. Chico moved for a directed verdict on the basis that the proof was insufficient to support entry of an order of protection under Tennessee Code Annotated section 36-3-605(a)³ because the only domestic abuse incident shown during trial occurred more than one year before Ms. Dulaney filed the petition seeking an order of protection. Counsel for Ms. Chico also argued that the doctrine of laches should bar entry of an order of protection under these circumstances. The trial court judge reserved ruling on the motion; however, the judge ruled that the applicable statute for extending an ex parte order of protection is Tennessee Code Annotated section 36-3-605(b) and that, unlike subsection (a), subsection (b) does not require “immediate and present danger of abuse.”

² No transcript of proceedings is included in the record; however, the trial court granted Ms. Chico’s motion to submit a statement of the evidence accompanied by a video recording of the proceedings in lieu of a transcript. This Court has reviewed the statement and video recording.

³ Section 36-3-605(a) provides: “Upon the filing of a petition under this part, the courts may immediately, for good cause shown, issue an *ex parte* order of protection. An immediate and present danger of abuse to the petitioner shall constitute good cause for purposes of this section.” Tenn. Code Ann. § 36-3-605(a) (emphasis added).

Ms. Chico called Hannah Harned, an employee of the Boys & Girls Clubs of the Tennessee Valley (“the Club”). Ms. Harned testified that Ms. Chico works as the liaison for the Club’s youth arts initiative, teaching a class primarily out of the Vestal location. She said that in late November, she received a request from Ms. Dulaney to work at the Vestal location for one day⁴ but that she denied the request because she was aware that an order of protection had been issued against Ms. Chico earlier in the month.

Ruling from the bench, the trial court found that the March 5, 2020 incident constituted domestic abuse under Tennessee Code Annotated section 36-3-601 and that it was reasonable to seek an order of protection. The court granted a six-month order of protection, noting that it was not barring Ms. Chico from being in the same work location as Ms. Dulaney because the parties share the same employer. The court’s written order was filed later that day and stated, as a particularized finding of fact: “After proof[,] the petitioner was placed in fear by virtue of Respondent ha[d] thrown her against a wall; banging Petitioner’s hand and arm against a wall to make Petitioner drop her keys; taking the Petitioner’s keys and holding her against her will.” Ms. Chico timely appealed.

ISSUES

Ms. Chico raises two questions of law in this appeal:

1. Whether an incident which occurred more than a year and a half prior to the filing of the petition for an order of protection can support the granting of an order of protection.
2. In the alternative, whether the doctrine of laches bars the issuance of an order of protection based on acts which occurred more than a year and a half prior to the filing of the petition for an order of protection.

STANDARD OF REVIEW

In a non-jury case such as this one, appellate courts review the trial court’s factual findings de novo upon the record, accompanied by a presumption of the correctness of the findings, unless the preponderance of the evidence is otherwise. *See* Tenn. R. App. P. 13(d); *Armbrister v. Armbrister*, 414 S.W.3d 685, 692 (Tenn. 2013). We review the trial court’s resolution of questions of law de novo, with no presumption of correctness.

Kelly v. Kelly, 445 S.W.3d 685, 691-92 (Tenn. 2014).

⁴ Ms. Dulaney, like Ms. Chico, is an employee of the Club but works primarily at a different location. According to Ms. Harned, there are about a dozen Boys & Girls clubs operating in Knox County.

“Issues of statutory construction are questions of law and shall be reviewed de novo without a presumption of correctness.” *Freeman v. Marco Transp. Co.*, 27 S.W.3d 909, 911-12 (Tenn. 2000). And we heed our Supreme Court’s guidance in this regard:

Our resolution of this issue is guided by the familiar rules of statutory construction. Our role is to determine legislative intent and to effectuate legislative purpose. The text of the statute is of primary importance, and the words must be given their natural and ordinary meaning in the context in which they appear and in light of the statute's general purpose. When the language of the statute is clear and unambiguous, courts look no farther to ascertain its meaning. When necessary to resolve a statutory ambiguity or conflict, courts may consider matters beyond the statutory text, including public policy, historical facts relevant to the enactment of the statute and the entire statutory scheme. However, these non-codified external sources “cannot provide a basis for departing from clear codified statutory provisions.”

Dallas v. Shelby Cnty. Bd. of Educ., 603 S.W.3d 32, 37 (Tenn. Ct. App. 2019) (quoting *Mills v. Fulmarque, Inc.*, 360 S.W.3d 362, 368 (Tenn. 2012) (citations omitted)).

ANALYSIS

The central question presented in this appeal is whether an order of protection should issue on the basis of an isolated incident of domestic abuse that occurred more than eighteen months before the victim sought such an order. We begin our analysis with a brief review of the statutory scheme governing orders of protection.

The General Assembly’s purpose behind orders of protection is, in part, “to assure that the law provides a victim of domestic abuse with enhanced protection from domestic abuse,” and, more specifically, to “prevent further harm to the victim.” Tenn. Code Ann. § 36-3-618 (2021); *see also Collins v. Pharris*, No. M1999-00588-COA-R3CV, 2001 WL 219652, at *5 (Tenn. Ct. App. Mar. 7, 2001) (“Thus, a protective order is intended to protect the victim of abuse and to prevent further harm to the victim.”). As pertinent to this case, domestic abuse includes “inflicting, or attempting to inflict, physical injury on an adult . . . by other than accidental means, [or] placing an adult . . . in fear of physical harm, physical restraint, [or] malicious damage to the personal property of the abused party” when the victim and the alleged abuser are “[a]dults . . . who live together or who have lived together.” *Id.* § 36-3-601(1), (5)(B). Any victim “who has been subjected to, threatened with, or placed in fear of, domestic abuse . . . may seek relief under this part by filing a sworn petition alleging domestic abuse . . . by the respondent.” *Id.* § 36-3-602(a). “Upon the filing of a petition . . . the courts may immediately, for good cause shown, issue an ex parte order of protection.” *Id.* § 36-3-605(a). Under the statute, “[a]n immediate and present danger of abuse to the petitioner” constitutes good cause. *Id.* The issuing court

may dissolve or expand an ex parte order of protection as follows:

Within fifteen (15) days of service of such order on the respondent under this part, a hearing shall be held, at which time the court shall either dissolve any ex parte order that has been issued, or shall, if the petitioner has proved the allegation of domestic abuse . . . by a preponderance of the evidence, extend the order of protection for a definite period of time, not to exceed one (1) year, unless a further hearing on the continuation of such order is requested by the respondent or the petitioner; in which case, on proper showing of cause, such order may be continued for a further definite period of one (1) year, after which time a further hearing must be held for any subsequent one-year period. Any ex parte order of protection shall be in effect until the time of the hearing, and, if the hearing is held within fifteen (15) days of service of such order, the ex parte order shall continue in effect until the entry of any subsequent order of protection issued pursuant to § 36-3-609. If no ex parte order of protection has been issued as of the time of the hearing, and the petitioner has proven the allegation of domestic abuse . . . by a preponderance of the evidence, the court may, at that time, issue an order of protection for a definite period of time, not to exceed one (1) year.

Id. § 36-3-605(b). Importantly, “an order of protection is appropriate **only where there is sufficient evidence that the victim needs the protection available.**” *Autry v. Autry*, 83 S.W.3d 785, 787 (Tenn. Ct. App. 2002) (emphasis added) (quoting *Collins*, 2001 WL 219652, at *5).

In this case, we conclude that there was insufficient evidence to show that Ms. Dulaney needed the protection available. The incident of domestic violence occurred on March 5, 2020. Ms. Dulaney did not seek an order of protection until November 12, 2021. Ms. Dulaney testified that, in the intervening eighteen months, she continued to live with Ms. Chico and that there were no incidents of domestic violence during that time period. In fact, Ms. Dulaney and Ms. Chico jointly contracted with a real estate company to help them purchase a home. Ms. Dulaney also supported Ms. Chico in her sobriety efforts. Even after the trial court entered a temporary order of protection, Ms. Dulaney tried to schedule a work shift at Ms. Chico’s primary work location. These actions, combined with the undisputed testimony that no further incidents of violence occurred after March 2020, demonstrate that Ms. Dulaney did not remain in fear of Ms. Chico and did not need an order of protection.

Our analysis pretermits review of the issue of laches.

CONCLUSION

We reverse the judgment of the trial court extending the ex parte order of protection.

Costs of this appeal are taxed to the Appellee, Korrie Dulaney, for which execution may issue if necessary.

KRISTI M. DAVIS, JUDGE