Cite as 2024 Ark. App. 148

# ARKANSAS COURT OF APPEALS

DIVISION III
No. CV-23-92

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| | | Opinion Delivered February 28, 2024 |
| PAUL WILLHITE | APPELLANT | APPEAL FROM THE WASHINGTON COUNTY CIRCUIT COURT [NO. 72DR-22-1477] |
| V. | | HONORABLE DOUG MARTIN, JUDGE |
| CAMERON WILLHITE | APPELLEE | AFFIRMED |

**CINDY GRACE THYER, Judge**

Paul Willhite appeals a ten-year order of protection granted by the Washington County Circuit Court, arguing that his daughter, Cameron Willhite, failed to present sufficient evidence to support a finding of domestic abuse. He further argues that his due-process rights were violated because he was not served with the final order of protection; the court gave deference to Cameron because she was represented by counsel; and the court failed to make a finding of domestic abuse pursuant to the statute. Finding no merits to his arguments, we affirm.

On October 5, 2022, Cameron Willhite filed a petition for order of protection against her father due to a threat of physical violence. In her affidavit, she stated that her father had called her brother and told him to tell her that she had five minutes to call him back, or he was going to come and "beat the fuck" out of her. Her brother then called the Farmington

police, and three officers came and escorted her to the police station until her mother arrived. Cameron's mother, Danita Willhite, also filed for an order of protection against Paul that same day. The court granted a temporary order of protection to both Cameron and her mother on the basis of the facts alleged in their respective petitions.

The court held a combined hearing on Cameron's and Danita's petitions. Cameron and her mother were represented by counsel at the hearing, and both testified. Paul attended and represented himself at the hearing. The substance of that hearing is detailed in our opinion in *Willhite v. Willhite*, 2024 Ark. App. 147, also handed down today.

After the hearing, the circuit court granted Cameron a ten-year final order of protection, and Paul, through counsel, filed a timely notice of appeal. On appeal, Paul argues that Cameron failed to present sufficient evidence to support a finding of domestic abuse. He further argues that his due-process rights were violated because he was not served with the final order of protection; the court gave deference to Cameron because was represented by counsel; and the court failed to make a finding of domestic abuse pursuant to the statute.

Paul first argues that Cameron failed to present sufficient evidence to support the entry of a final order of protection. He argues that Cameron did not testify that she was in "fear of imminent physical harm, bodily injury, or assault," as required by the statute, instead stating that she knew there was a chance it "might" happen. He notes that she never testified that he had ever physically harmed her; instead, she merely claimed that he had screamed at her in the past.

The standard of review following a bench trial is whether the circuit court's findings are clearly erroneous or clearly against the preponderance of the evidence. *Hopper v. Hopper*, 2023 Ark. App. 504, 678 S.W.3d 602. A finding is clearly erroneous when, although there is evidence to support it, the reviewing court on the entire evidence is left with a definite and firm conviction that a mistake has been made. *Id.* Disputed facts and determinations of the credibility of witnesses are within the province of the fact-finder. *Id.*

Here, Cameron filed for an order of protection pursuant to Arkansas Code Annotated section 9-15-201 (Repl. 2020) of the Domestic Abuse Act. Under section 9-15-205 (Repl. 2020), when a petition for an order of protection is filed under the Domestic Abuse Act, the circuit court may provide relief to the petitioner upon a finding of domestic abuse. "Domestic abuse" is defined as "[p]hysical harm, bodily injury, assault, or the infliction of fear of imminent physical harm, bodily injury, or assault between family or household members." Ark. Code Ann. § 9-15-103(4)(A) (Repl. 2020).

If an order of protection is granted without sufficient evidence to support a finding of domestic abuse, the order will be reversed. *See Paschal v. Paschal*, 2011 Ark. App. 515, at 7. Where there is no evidence that the respondent committed physical abuse or inflicted imminent fear of physical harm, bodily injury, or assault, it is an abuse of discretion to issue the order of protection. *Claver v. Wilbur*, 102 Ark. App. 53, 59, 280 S.W.3d 570, 573 (2008).

First, we note that toward the end of Cameron's direct examination, the court called a brief recess. When court resumed, Paul interjected that he did not want to cross-examine Cameron and no longer wanted to defend against the petition. As a result of Paul's

statements withdrawing his defense to the allegations, the court entered the order of protection without hearing the remainder of Cameron's evidence.[1] Therefore, Paul's statements could be construed as acquiescence. It is well settled under the doctrine of invited error that an appellant may not complain on appeal that the circuit court erred if the appellant induced, consented to, or acquiesced in that action. *See Hopper*, *supra* (finding acquiescence where appellant stated he had no objection to entry of an order of protection).

Even if Paul's actions were not an acquiescence, the circuit court's decision to enter the order of protection was not clearly erroneous. Here, there was sufficient evidence of the infliction of fear of imminent physical harm or bodily injury.[2] Cameron testified that she received a phone call from her brother, Chase. Chase informed her that their father had called him and left a message for her. Their father said that if Cameron did not call him within the next five minutes, he would knock down her door and beat her. Cameron testified that she believed he might harm her and had the police escort her to the police station until her mother arrived. She also testified that a few months prior to this call, Paul "blew up" on her and would not let her leave until he said she could leave. She testified she was scared to

[1]Prior to accepting Paul's concession, the court noted that it had interrupted counsel's questioning of Cameron, and counsel indicated that she had not finished her direct examination of her. She also indicated that Chase was available to provide testimony as well.

[2]While Paul argues that much of the evidence against him was based on hearsay, the evidence against him was admitted without objection. Evidence admitted without objection may constitute substantial evidence. *See, e.g.*, *Jones v. State*, 332 Ark. 617, 967 S.W.2d 559 (1998); *Libokmeto v. Ark. Dep't of Hum. Servs.*, 2019 Ark. App. 274, 577 S.W.3d 35; *Moseby v. State*, 2010 Ark. App. 5.

leave. Given the evidence of Paul's erratic and threatening behavior towards Cameron's mother, with whom she lived, there was ample evidence to support this fear. In fact, there was testimony presented that Cameron slept with a gun by her side due to that fear.

Finally, to the extent Paul asks us to reweigh the evidence in his favor, we will not do so. The circuit court's weighing the evidence differently than Paul wanted it to be weighed is not reversible error. *McCord v. Ark. Dep't of Hum. Servs.*, 2020 Ark. App. 244, 599 S.W.3d 374. We do not act as a super fact-finder nor do we second-guess the circuit court's credibility determinations. *Id.*

As for Paul's due-process arguments, none of those arguments were made below; thus, they are not preserved for our review. We will not consider arguments, even constitutional ones, made for the first time on appeal because doing so deprives the circuit court of the opportunity to fully develop the issue. *Sutton v. Falci*, 2024 Ark. App. 46, ___ S.W.3d ___.

Affirmed.

GRUBER and BROWN, JJ., agree.

*Dodds, Kidd, Ryan & Rowan*, by: *Catherine A. Ryan*, for appellant.

*Jane Watson Sexton*, for appellee.