



ORIGINAL

NOT FOR OFFICIAL PUBLICATION

IN THE COURT OF CIVIL APPEALS OF THE STATE OF OKLAHOMA
FILED
COURT OF CIVIL APPEALS
STATE OF OKLAHOMA

DIVISION II

JUL 21 2022

CANDACE MICHELLE KEHOE,)
)
Plaintiff/Appellee,)
)
vs.)
)
PATRICIA LYNN KEHOE,)
)
Defendant/Appellant.)

JOHN D. HADDEN
CLERK

Case No. 119,345

APPEAL FROM THE DISTRICT COURT OF
ROGERS COUNTY, OKLAHOMA

HONORABLE DAVID SMITH, TRIAL JUDGE

AFFIRMED

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OPINION BY GREGORY C. BLACKWELL, JUDGE:

Patricia Kehoe appeals the trial court's granting a final protective order in favor of Candace Kehoe's minor children. Patricia argues that the trial court's order is contrary to statute because she was not the alleged offender—her minor child was—and that the evidence was insufficient to support the order. On review, we affirm the trial court.

BACKGROUND

This case began in March 2020, when Candace Kehoe filed for an emergency protective order on behalf of her three minor children against her former mother-in-law, Patricia Kehoe, in order to prevent the parties' children from playing with each other.

Before the initial order, Candace's children often stayed at Patricia's home during the day and interacted with Patricia's own minor children. In her protective order application, Candace alleged that one of Patricia's minor children inappropriately and lewdly touched Candace's child in Patricia's home while under Patricia's supervision. The initial temporary protective order was approved on March 18, 2020, and was subsequently continued until the trial court issued the permanent protective order from which this appeal was taken.

Over the course of several hearings, the trial court heard testimony from a therapist, a Rogers County Sheriff's office investigator, a Department of Human Services' investigator, Patricia's son,¹ and Patricia herself. The trial court also reviewed the forensic interview of the alleged sexual assault victim, though neither the video of that interview nor a transcript of the same appears in the record on appeal. Upon that evidence and testimony, the court issued a two-year protective order on January 6, 2021. Patricia appeals.

¹ Patricia's son, George Dakota, is also Candace's former husband.

STANDARD OF REVIEW

In Oklahoma, a protection order pursuant to the Protection from Domestic Abuse Act, 22 O.S. § 60, is analogous to an injunction, and is thus reviewed for an abuse of discretion by the trial court. *Curry v. Streater*, 2009 OK 5, ¶ 8, 213 P.3d 550. Under an abuse-of-discretion review, the appellate court examines the evidence in the record and reverses the trial court only if the trial court's decision is clearly against the evidence or is contrary to a governing principle of law. *Id.* A reversal under an abuse of discretion standard requires the appellate court to find that the trial court's conclusions and judgment were clearly erroneous, against reason and evidence. *Id.*

ANALYSIS

On appeal, Patricia urges that the trial court abused its direction by entering a final protective order against her because, as Patricia argues, the relevant statutes require the court to find that Patricia committed the abuse, not Patricia's minor child. Patricia additionally argues that the trial court erred in entering the final protective order against the weight of a DHS investigation that found claims against Patricia's supervision to be unsubstantiated.

22 O.S. § 60.2

Patricia argues that the final protective order was deficient under the terms of 22 O.S. § 60.2.² Patricia's view is that § 60.2 only protects against an act or

² That section reads:

A victim of domestic abuse, a victim of stalking, a victim of harassment, a victim of rape, any adult or emancipated minor household member on behalf of any other family or household member who is a minor or incompetent, or

threat of physical harm committed *by an adult*, and that there was no act or threat of physical harm by an adult in the present case. Further, Patricia objects to the trial court holding that the judgment was necessary “in the best interests of the children” because that is the standard for custody and visitation issues and not the standard for protective orders.

Candace’s children spent many days at Patricia’s home while Candace and her husband were working. While Candace’s children were at Patricia’s, an alleged incident or incidents occurred between one of Candace’s children and one of Patricia’s children that allegedly concluded with Patricia’s child sexually assaulting Candace’s child. As the alleged incident or incidents occurred at Patricia’s home, the children were always under her care and supervision.

At the several hearings in this matter, the trial court heard testimony from a trauma therapist who testified that the alleged victim did not show signs of coaching.³ (October 27 Transcript, pg. 37). An investigator in the Rogers County sheriff’s office also opined that he did not believe that the minor child was

any minor age sixteen (16) or seventeen (17) years may seek relief under the provisions of the Protection from Domestic Abuse Act.

22 O.S. § 60.2. Further:

‘Domestic abuse’ means any act of physical harm or the threat of imminent physical harm which is committed by an adult, emancipated minor, or minor child thirteen (13) years of age or older against another adult, emancipated minor or minor child who is currently or was previously an intimate partner or family or household member

Id. § 60.1

³ Patricia’s theory throughout the hearings was that Candace had “coached” the alleged assault victim to gain an advantage in a custody dispute attached to her ongoing divorce from Patricia’s son.

coached into making her statements. (October 27 Transcript, pg. 53). Nor did the DHS investigator who testified believe that the child was coached.

From this evidence and testimony it was possible to conclude that Patricia, via her alleged lack of care, posed a “threat of imminent physical harm” to Candace’s children. The trial court consequently did not abuse its discretion by issuing the order against Patricia under 22 O.S. § 60.2.

Patricia also objects to the court’s “best interest of the child” language, which is the standard for custody and visitation cases, being used in a protective order case. The record is clear that, despite this divergence, that error would be harmless because the trial court was within its discretion to find that a final protective order was appropriate.

DHS Investigation

Patricia next argues that the trial court abused its discretion in granting a permanent protective order because a DHS investigation found the claims to be “unsubstantiated” in its related investigation. However, the unsubstantiated investigation, though a piece of evidence, is not necessarily dispositive. The trial court had ample evidence, including the testimony of the DHS investigator who conducted the investigation, to conclude that the alleged victim minor child was truthful in her account of assault at Patricia’s home. A substantiated DHS finding was not required to issue the final protective order, and there was ample evidence available to the court to do so.

Forensic Interviews

Finally, we note that when issuing its order, the trial court said:

I've had the opportunity to watch the three videos in the CAC and watched the one with [the alleged victim], well, three times in its critical places. I guess the bottom line is I believe [the alleged victim] in the way her body language was and the way she described it, and it appeared to me that the interviewer believed her as well.

Nevertheless, neither copies of these videos nor transcripts of the same appear in the record on appeal. It is always the appellant that "bears the undivided responsibility for producing to a court of review a record that will adequately demonstrate error in the trial court's decree" *Ray v. Ray*, 2006 OK 30, ¶ 12, 136 P.3d 634. We find it impossible to determine whether the trial court's ruling was against reason or evidence when the primary basis for the court's ruling has not been provided for review.

AFFIRMED.

WISEMAN, P.J., and FISCHER, C.J. (sitting by designation), concur.

July 21, 2022