COMMONWEALTH OF KENTUCKY
SUPREME COURT
FILE NO. 2012-SC-000737

PHILLIP SITAR **APPELLANT**

v.

APPEAL FROM CRITTENDEN FAMILY COURT
HON. WILLIAM MITCHELL, JUDGE
CASE NO. 03-D-00026-004

COMMONWEALTH OF KENTUCKY, ET AL **APPELLEES**

BRIEF FOR APPELLEE, COMMONWEALTH OF KENTUCKY

Submitted by:

JACK CONWAY
ATTORNEY GENERAL

MARY E. ROHRER
SPECIAL ASST. ATTORNEY GENERAL
217 WEST BELLVILLE STREET
P.O. BOX 415
MARION, KENTUCKY 42064
270-965-2222

Certificate required by CR 76.12(6)

The Undersigned does hereby certify that copies of this brief were served upon the following named individuals by first class mail, postage prepaid, on April 8, 2013: Hon. William Mitchell, Family Court Judge, P.O. Box 398, Dixon, Kentucky 42409-0398; Hon. Kathleen K. Schmidt, Assistant Public Advocate, Dept. of Public Advocacy, Suite 302, 100 Fair Oaks Lane, Frankfort, Kentucky 40601; Ms. Loretta Glover, 423 North Maple Street, Trailer #10, Marion, Kentucky 42064; Hon. Paul G. Sysol, 739 South Main Street, P.O. Box 695, Henderson, Kentucky 42419; and Hon. Jack Conway, Attorney General, Office of Criminal Appeals, 1024 Capital Center Drive, Frankfort, Kentucky 40601. The undersigned does also certify that the record on appeal was not checked out.

JACK CONWAY, ATTORNEY GENERAL

Mary E. Rohrer

MARY E. ROHRER
SPECIAL ASST. ATTORNEY GENERAL

INTRODUCTION

The Appellant appeals the denial of his CR 60.02 motion, arguing that the Crittenden Family Court lacked jurisdiction and sufficient evidence to grant an emergency protective order/domestic violence order (hereinafter "EPO/DVO"). The issues on appeal are (1) whether the trial court appropriately overruled Appellant's motion to declare order void because the court had jurisdiction over both the EPO and DVO based on a sufficient relationship between the parties and (2) whether the trial court committed palpable error by finding the existence of imminent harm from the face of the petition.

STATEMENT CONCERNING ORAL ARGUMENT

The Commonwealth of Kentucky, Appellee, does not request oral argument, as the arguments and law in this case are clearly and thoroughly presented in the parties' briefs.

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COUNTERSTATEMENT OF THE CASE

The Crittenden Family Court granted an EPO based on a domestic violence petition filed by Loretta Glover on September 26, 2011. (TR 5, 1) The petition was filed on behalf of Glover's minor child, A.B., and alleged that Phillip Sitar, the Appellant here, forced the minor child to engage in sexual acts with him on several occasions. (TR 1)

No specific date or dates of these incidents were alleged on the domestic violence petition. (TR 1) The petition states that "on about, 20__, in Crittenden County, Kentucky" the incidents occurred. (TR 1) The Petitioner alleged that incidents of sexual abuse occurred "several times." (TR1)

The Petitioner, Ms. Glover, in the section of the petition labeled "Respondent's relationship to Petitioner," put an "x" in the box next to *former spouse*. (TR 3) Above the words *former spouse*, Ms. Glover wrote, "x-Boyfriend." (TR 3) In the line following the option *person who lives in the same household as a child(ren) if the child(ren) is alleged victim (specify)*, Ms. Glover wrote, "Phillip is x-Boyfriend." (TR 3)

After granting the EPO, the family court set a hearing for October 4, 2011. (TR 5) Both Ms. Glover and the Appellant were present at the October 4, 2011, hearing, neither represented by counsel. (VR 10/4/11 11:02:00 a.m.) During the hearing, Ms. Glover testified that the Appellant was her ex-boyfriend and that they had lived together for approximately six years. (VR 10/4/11 11:02:19 a.m.) Ms. Glover testified that the alleged incidents involved her daughter and that she, Ms. Glover, had no personal knowledge of the incidents. (VR 10/4/11 11:03:09 a.m.) Because all of the evidence presented was hearsay, the court continued the hearing for two weeks to allow the alleged victim to testify. (VR 10/4/11 11:04:44 a.m.)

Two weeks later, on October 18, 2011, Ms. Glover, the minor child A.B., and the Appellant appeared for the hearing. (VR 10/18/11 11:02:00 a.m.) A.B., age seventeen, testified that Appellant was her mother's ex-boyfriend and that he had lived with them in the home for a period of about six years. (VR 10/18/11 11:02:50 a.m.) She testified that he did not live in the home now. (VR 10/18/11 11:03:08 a.m.) A.B. further testified that Appellant did in fact ***force*** her to have sexual intercourse with him "a lot." (VR 10/18/11 11:04:12 a.m.) She testified that Appellant forced her to do other sex acts, as well, and that the abuse occurred over a four-year span. (VR 10/18/11 11:05:04 a.m.)

The Appellant denied the allegations but admitted that he did not treat Ms. Glover's children well. (VR 10/18/11 11:06:37 a.m.)

The court explained that the hearing was a civil proceeding, so the standard was a preponderance of the evidence, meaning more likely than not. (VR 10/18/11 11:11:39 a.m.) The court went on to explain that while it could not consider hearsay evidence, it could look at a person's past history for veracity and past violence. (VR 10/18/11 11:12:00 a.m.) Then, going through Appellant's record, the court recited a lengthy list of past offenses, including several violent offenses and violations of DVOs. (VR 10/18/11 11:12:29 a.m.) Based on the evidence presented and Appellant's prior record, the court found by a preponderance of the evidence that the allegations were true and entered a Domestic Violence Order. (VR 10/18/11 11:13:30 a.m.; TR 22-24)

Shortly after the entry of the DVO, the Appellant was charged with the offense of violating the terms of the DVO. A public defender was appointed to represent the Appellant on that charge. Appellant's attorney then filed a motion to declare order void in the domestic violence action. (TR 25-27) On January 10, 2012, a hearing was held in

Crittenden Family Court on Appellant's motion to declare order void. At this hearing, Appellant's attorney stated that the DVO should be declared void because the information on the petition was insufficient to establish the required relationship of the parties and because the allegations in the EPO were involving the daughter, whom he argued did not meet the relationship requirement. (VR 1/10/12 11:03:50 a.m.)

The Crittenden County Attorney, who intervened in the family court action, responded that the Appellant should have filed a timely appeal of the DVO. (VR 1/10/12 11:07:10 a.m.) The reason for the challenge of the DVO at this time was clearly the alleged violation pending in Crittenden District Court. (VR 1/10/12 11:08:12 a.m.)

The court ruled that there were sufficient grounds for the EPO/DVO, pointing out that an appeal was not timely done. (VR 1/10/12 11:08:35 a.m.; TR 34-35) The court explained that all that is before the court when determining whether to issue an EPO is the petition. (VR 1/10/12 11:09:15 a.m.) In the petition at issue here, the court explained that former spouse was checked with *x-boyfriend* written in. (VR 1/10/12 11:09:00 a.m.) The court had no way of knowing whether the Appellant was both a former spouse and an ex-boyfriend or just one of those; the Petitioner may have been double defining the relationship. (VR 1/10/12 11:09:21 a.m.) However, because *former spouse* was checked and because of the nature of the allegations, the EPO was issued and was proper. (VR 1/10/12 11:09:48 a.m.)

The court of appeals affirmed the Crittenden Family Court's order overruling Appellant's motion to declare order void. *Sitar v. Commonwealth*, No. 2012-CA-000105-ME (Ky. App. Oct. 15, 2012). The court of appeals found that the family court had jurisdiction because a proper relationship existed between Ms. Glover and the

Appellant. *Id.* at 6. More specifically, the court of appeals found that the family court properly found that Ms. Glover met the statutory definition of a member of an unmarried filing on behalf of a minor family member, thus giving the family court jurisdiction. *Id.*

The court of appeals found Ms. Glover's error in not selecting that she was a member of an unmarried couple on the original petition to be inconsequential because she was actually a member of an unmarried couple. *Id.* at 7. Because the family court at the DVO hearing found that they were members of an unmarried couple, living together during the time of the alleged abuse of A.B., the family court did have jurisdiction. *Id.*

The court of appeals also disagreed with Appellant's argument that the EPO should not have been issued because the existence of imminent harm could not be found on the face of the petition. *Id.* The court ruled that the family court's issuance of the EPO did not result in palpable error because

> the serious nature of the allegations, namely sexual abuse of a minor, the fact that the abuse was alleged to have occurred more than once, and [Sitar]'s past history of violent offenses and violations of DVOs tend to indicate the presence of an immediate and present danger of domestic violence and abuse.

Id. at 8.

This matter is now before the Court on discretionary review.

ARGUMENT

I. The family court did have jurisdiction over the EPO and the DVO because a sufficient relationship between Appellant and the minor child did exist.

The first issue, whether the family court had jurisdiction over the EPO and DVO granted against the Appellant, was preserved for review in Appellant's motion to declare order void under CR 60.02, which was overruled. (TR 25-27, 34-35; VR 1/10/12 11:03:25 a.m.) This issue was preserved despite the fact that Appellant did not timely and properly appeal the issuing of the EPO/DVO. (VR 1/10/12 11:08:35 a.m.)

Appellant challenged the EPO/DVO at issue here under CR 60.02. (VR 1/10/12 11:03:50 a.m.) Under CR 60.02, a court may "relieve a party or his legal representative from its final judgment, order, or proceeding" only upon certain grounds. CR 60.02. Appellant argues that the EPO/DVO should have been declared void on the grounds that "the judgment is void, . . . or it is no longer equitable that the judgment should have prospective application; or . . . [because of an]other reason of an extraordinary nature justifying relief." CR 60.02(e)-(f). For a judgment to be void,

> the court, (a) does not have jurisdiction of the subject-matter, or (b) jurisdiction of the person of the adversely affected litigant, and (c) although it has jurisdiction of both the subject-matter and the person so affected, it proceeds to act in a manner and at a time forbidden by law with respect to the matters and things adjudicated.

Lowther v. Moss, 39 S.W.2d 501, 503 (Ky. App. 1931).

Because "[a]ny action under CR 60.02 addresses itself to the sound discretion of the court," "the exercise of that discretion will not be disturbed on appeal except for abuse." *Richardson v. Brunner*, 327 S.W.2d 572, 574 (Ky. App. 1959), citing *Fortney v. Mahan*, 302 S.W.2d 842 (Ky. App. 1957). The court of appeals has previously stated,

> In concluding that CR 60.02 relief is available as to DVOs, . . . we reiterate that CR 60.02 "is designed to provide relief where the reasons for the relief are of an extraordinary nature." A very substantial showing is required to merit relief under its provisions. Our domestic violence and abuse laws have been carefully crafted to protect victims in as expeditious a manner as possible.

Roberts v. Bucci, 218 S.W.3d 395, 397-98 (Ky. App. 2007), quoting *Ray v. Commonwealth*, 633 S.W.2d 71, 73 (Ky. App. 1982), citing *Ringo v. Commonwealth*, 455 S.W.2d 49, 50 (Ky. 1970).

Here, the family court had jurisdiction to grant both the EPO and the DVO because it had jurisdiction of both the subject matter and the person of the Appellant. Furthermore, the family court did not act in a manner or at a time forbidden by law with respect to the matters and things adjudicated. This Court would have to find that the family court abused its discretion in overruling Appellant's CR 60.02 motion in order to grant the relief requested by the Appellant. The extraordinary reasons and substantial showing required for relief under CR 60.02 are simply not present in this case. Both the family court and the court of appeals failed to find the grounds necessary to grant the Appellant relief under CR 60.02 because those grounds do not exist here.

Kentucky's domestic violence laws are very clear, having been drafted with the specific design of protecting victims as expeditiously as possible. Granting the relief requested by the Appellant would only serve to diminish the protection available to victims of domestic violence and abuse and undermine the intent of the legislature.

A. <u>The family court had jurisdiction to grant the EPO based on the face of the petition.</u>

First, Appellant argues that the family court had no authority to grant the original EPO because the relationship required to give the court jurisdiction over the action

"could not be found to exist from the face of the petition." (Appellant's Br. 6) This is simply inaccurate, as the court clearly had jurisdiction over the parties and the subject matter of the case.

Pursuant to KRS 403.725(1), "Any family member or member of an unmarried couple who is a resident of this state . . . may file a verified petition . . ." for a DVO. As defined by KRS 403.720(4), a member of an unmarried couple includes "a member of an unmarried couple who . . . have formerly lived together." A petition may be filed by a "member of an unmarried couple on behalf of a minor family member." KRS 403.725(3). The term *family member* includes a child. KRS 403.720(2).

Here, Ms. Glover, the Petitioner, qualifies as a "member of an unmarried couple" because the definition includes "a member of an unmarried couple who . . . have formerly lived together." KRS 403.725(1); KRS 403.720(4). (VR 10/4/11 11:02:19 a.m.; VR 10/18/11 11:02:50 a.m.) Despite the fact that Ms. Glover did not check the box labeled "unmarried, currently or formerly living together," she did check the box labeled "former spouse," which is another category of relationship covered under KRS 403.725(1) because a family member includes a former spouse. KRS 403.720(2). (TR 3) Although this was clearly a mistake and the result of some confusion about the form, the petition is all the court has in front of it to decide whether to issue an EPO.

The fact that Ms. Glover also wrote "x-Boyfriend" under the relationship section of the petition is irrelevant. (TR 3) She could have been double defining the relationship or referring to different statuses of the relationship when the alleged abuse occurred—that some abuse occurred while Appellant was her boyfriend and that some occurred while Appellant was her spouse. A court, when determining whether to issue an EPO, does not

have the benefit of being able to question the petitioner about exactly what he or she means by everything alleged in the petition. (VR 1/10/12 11:09:15 a.m.) That testimony is heard at the DVO hearing. Therefore, the family court did not abuse its discretion when it found that the proper relationship existed from the face of the petition.

Appellant states that the "point of having a form is so the trial court, without any other information, can reliably assess whether to grant the EPO, extending the process to at least a hearing where the parties can present evidence." (Appellant's Br. 10) However, the point of allowing a party to procure an EPO is for the emergency protection of a victim, just as the name "emergency protective order" suggests. These forms are frequently completed by citizens who do not possess the benefit of police training or a law degree. These citizens have various backgrounds and varying levels of education. If it appears from the face of the petition that a petitioner has standing and the grounds to receive an EPO/DVO, then a court must grant the EPO and allow both parties an opportunity to be heard at a DVO hearing. If the court finds at the DVO hearing that information on the petition was false and the petitioner lacks standing or the proper grounds do not exist, then the EPO is dismissed and a DVO is not entered. The respondent suffers no harm. Any small inconvenience the respondent may suffer is substantially outweighed by the harm that may come to a petitioner who is wrongly denied an EPO because he or she checked one of the qualifying relationship boxes and tried to further explain the relationship. When a qualifying relationship box is checked and grounds exist from the face of the petition, a court must grant an EPO.

Ms. Glover filed the petition on behalf of a minor child, her daughter. (TR 1) Under KRS 403.725(3), an EPO/DVO petition "may be filed by . . . [a] member of an

unmarried couple on behalf of a minor family member." The term *family member* includes a child. KRS 403.720(2).

Appellant argues that "even if Loretta was a member of an unmarried couple, she could only file the petition on behalf of the 'minor family member'" and that "A.B. could not be a 'family member' under KRS 403.720(2)." (Appellant's Br. 8) Appellant argues that because A.B. is not the Appellant's child (and she was not alleged to be in the petition), she is not protected by the statute.

Appellant's interpretation of KRS 403.725 and KRS 403.720 is incorrect. KRS 403.725(3) clearly states that a petition may be filed by a "member of an unmarried couple on behalf of a minor family member." The statute does not specify whether the minor family member must be related to the accused or the petitioner. The plain meaning of the statute does not limit the minor family member on whose behalf a petition is filed to only minor family members of the accused. Both the family court and the court of appeals agreed with the Commonwealth's interpretation of these statutes. Appellant's interpretation of the statute would diminish the protection available to victims of domestic violence and abuse and undermine the intent of the legislature.

Ms. Glover alleged in her petition that the victim of the abuse was her daughter, a minor family member, and that the Appellant was her former spouse and ex-boyfriend. (TR 1, 3) Ms. Glover specifically stated in the petition, "Phillip Sitar has made my daughter [A.B.] do & have sexual acts with him." (TR 1)

Therefore, because a qualifying relationship, which gave the court personal and subject matter jurisdiction, was alleged on the face of the petition, the EPO was properly granted. Because the EPO was properly granted, a DVO hearing was properly held. (VR

10/18/11 11:02:00 a.m.) The result of the hearing was that the DVO was entered. (VR 10/18/11 11:13:30 a.m.; TR 22-24) The family court did not abuse its discretion by overruling Appellant's motion to declare order void. The record clearly supports this ruling.

B. The family court had jurisdiction to grant the DVO because a sufficient relationship did exist.

Appellant argues that neither the evidence presented at the October 4, 2011 hearing, nor the evidence presented at the October 18, 2011 hearing "created a relationship sufficient to give the Family Court jurisdiction to grant the DVO." (Appellant's Br. 10)

"[T]he domestic violence statutes should be construed liberally in favor of protecting victims from domestic violence and preventing future acts of domestic violence. . . . But the construction cannot be unreasonable." *Barnett v. Wiley*, 103 S.W.3d 17, 19 (Ky. 2003), citing KRS 500.030 and *Beckham v. Board of Education of Jefferson County, Ky.*, 873 S.W.2d 575, 577 (Ky. 1994).

> In fact, "[t]he plain meaning of the statutory language is presumed to be what the legislature intended, and if the meaning is plain, then the court cannot base its interpretation on any other method or source." We "ascertain the intention of the legislature from words used in enacting statutes rather than surmising what may have been intended but was not expressed." In other words, we assume that the "[Legislature] meant exactly what it said, and said exactly what it meant."

Revenue Cabinet v. O'Daniel, 153 S.W.3d 815, 819 (Ky. 2005) (footnotes omitted).

As Appellee has already stated, pursuant to KRS 403.725(1), "Any family member or member of an unmarried couple who is a resident of this state . . . may file a verified petition . . . " for a DVO. As defined by KRS 403.720(4), a member of an

unmarried couple includes "a member of an unmarried couple who . . . have formerly lived together." A petition may be filed by a "member of an unmarried couple on behalf of a minor family member." KRS 403.725(3). The term *family member* includes a child. KRS 403.720(2).

The evidence at both DVO hearings established that Ms. Glover and Appellant were members of an unmarried couple who formerly lived together. (VR 10/4/11 11:02:19 a.m.; VR 10/18/11 11:02:50 a.m.) The Appellant does not dispute that he and Ms. Glover are members of an unmarried couple. Ms. Glover filed the petition on behalf of her minor daughter, a "family member." (VR 10/4/11 11:03:09 a.m.) Appellant, Ms. Glover, and A.B. were living together at the time of the alleged abuse. (VR 10/18/11 11:02:50 a.m.) Therefore, the child's relationship to Appellant was sufficient to give the court jurisdiction to grant the DVO. The statute does not require A.B. to be a child of the unmarried couple—only a family member of one of the members of an unmarried couple.

Appellant argues that A.B. could not be a member of an unmarried couple because she was not a child "of that couple." (Appellant's Br. 11-12) Neither Appellee—Ms. Glover nor the Commonwealth—has ever alleged that A.B. was a child of an unmarried couple. A.B. is, however, a family member of a member of an unmarried couple.

Appellant limits the term "minor family member" to a minor family member of an accused perpetrator of domestic violence. The legislature, however, has defined "family member" in KRS 403.720(2) to include "a child"; and KRS 403.725(3) states, "A petition . . . may be filed by . . . [a] member of an unmarried couple on behalf of a minor family member." Neither of these statutes limits the minor family member on whose behalf the

petition is filed to being the family member of the accused. The language in these statutes is plain, ordinary, and clear. A limitation of the meaning that is not expressed in the plain language of the statutes is not called for in this case, as no unreasonable result is created from the plain meaning.

The court of appeals and the family court agreed with Appellee's interpretation of the domestic violence statutes. The fact that the parties no longer lived together did not negate the potential risk involved to the child. It is the province of the trial court to determine whether there is a risk of domestic violence. As Appellant admits, not only did the parties live in trailers in close proximity to one another, but also the Appellant and Ms. Glover had been discussing marriage. (Appellant's Br. 3, 2) The interest of the state in protecting persons in certain relationships from domestic violence is served by affirming the decision of the family court. The potential for future domestic violence existed; and therefore, the issuing of the DVO was justified.

The court of appeals case, *Hunter v. Mena*, 302 S.W.3d 93 (Ky. App. 2010), is not on point. *Hunter* is distinguishable from the case here as it involved a domestic violence petition filed by a member of an unmarried couple on her own behalf—not on behalf of a minor family member. *Id.* at 96. In *Hunter*, a nephew of the accused was added to the DVO as an afterthought, without a petition having been filed on his behalf by a person with standing. *Id.* In a footnote, the court of appeals expressed an opinion that it "do[es] not believe the legislature had this scenario in mind when it enacted KRS 403.725(3) but more likely envisioned the protection of the child of a domestic violence perpetrator by the perpetrator's partner who was not related to the child." *Id.* at 96 n.2. This footnote is mere dictum, having no bearing on the ruling in *Hunter*. The court of

appeals, in the footnote itself, acknowledged that it was expressing a belief about what the legislature intended in drafting KRS 403.725(3), thereby implying that the plain language of the statute clearly allows for protection of a broader class of minor family members. *Id.* In fact, the court of appeals has agreed with Appellee's interpretation by affirming the case here on October 15, 2012.

The trial court, which is in the best position to make a decision based on the evidence presented, clearly did not abuse its discretion in overruling Appellant's motion to declare order void, as the record supports this ruling. Appellant was not denied due process of law as the family court clearly had jurisdiction over the parties and the subject matter involved.

II. The EPO was properly granted because the existence of imminent harm could be found from the face of the petition.

The second issue raised by Appellant, whether the existence of imminent harm could be found from the face of the petition, was not preserved for appeal, as Appellant admits in his brief. (Appellant's Br. 14) This issue should not be reviewed under RCr 10.26 because EPO/DVO proceedings are civil matters. *Rankin v. Criswell*, 277 S.W.3d 621, 624 (Ky. App. 2008). Therefore, palpable error relief is not available as the Criminal Rules only apply to criminal proceedings. RCr 1.02.

However, if the Court finds that RCr 10.26 does apply, this issue should not be reviewed under RCr 10.26 because not only was there no palpable error, there was no error at all. Under RCr 10.26, "A palpable error which affects the substantial rights of a party may be considered . . . by an appellate court on appeal, even though insufficiently raised or preserved for review, and appropriate relief may be granted upon a determination that manifest injustice has resulted from the error." No substantial rights

of Appellant were affected, and no manifest injustice resulted from issuing of the EPO/DVO.

No relief from the EPO/DVO should be granted based on CR 60.03 because equity demands that the orders be upheld. In no way was the family court unfair to the Appellant when it denied his motion to declare the court's order void.

Under KRS 403.740, "If upon review of the petition, . . . the court determines that the allegations contained therein indicate the presence of an immediate and present danger of domestic violence and abuse, the court shall issue . . . an emergency protective order . . . ."

Appellant argues that "no alleged facts existed to support a finding of imminent and present danger based on the petition on its face." (Appellant's Br. 15) However, the petition alleges that Appellant "has made my daughter [A.B.] do & have sexual acts with him. This has happen [sic] several times and the City Police & DCFS [sic], Bill McGee [sic] are involved and I was told to file for the E.P.O. to protect my daughter and self from Phillip." (TR 1) The serious nature of the allegations, namely sexual abuse of a minor; the fact that the abuse was alleged to have occurred more than once; the fact that the City Police and the Department for Community Based Services were involved; and the fact that the Petitioner was advised to file for the EPO by either law enforcement or the Department for Community Based Services tended to indicate that an immediate and present danger of domestic violence and abuse did exist at the time.

The family court was completely justified in issuing the EPO based on these allegations. Indeed, one would have serious concerns if an EPO were not issued under these circumstances.

The fact that no specific dates were alleged is of little significance. The allegations made were themselves of such a serious nature that the family court was justified in issuing the EPO. The court of appeals rightly found that the family court's denial of Appellant's CR 60.02 motion did not result in palpable error.

The family court utilized Appellant's criminal history at the DVO hearing for veracity and past violence. Appellant is correct that this information was not relied upon in the issuance of the EPO.

The family court did not err in finding that imminent harm could be found from the face of the petition. Appellant has failed to show that the family court committed a palpable error affecting his substantial rights. The Appellant has failed to show that the family court made any error; so necessarily, he has failed to show that a manifest injustice has resulted from an error. No substantial rights of Appellant were affected, and no manifest injustice resulted from the issuing of the EPO/DVO. Appellant's due process rights were not violated. The DVO must be upheld.

CONCLUSION

The family court subjected Appellant to a Domestic Violence Order because it had the jurisdiction to do so based upon the existence of a sufficient relationship between the Appellant and the victim. The family court correctly overruled Appellant's CR 60.02 motion to declare order void. The EPO was properly granted because immediate and present danger was shown to exist, and any alleged error based on no immediate and present danger shown to exist on the petition was not preserved for review. Appellant's due process rights were not violated. Therefore, Appellee respectfully requests that this Court uphold the family court's order.

Respectfully submitted,

JACK CONWAY
ATTORNEY GENERAL

Mary E. Rohrer

MARY E. ROHRER
SPECIAL ASST. ATTORNEY GENERAL
217 WEST BELLVILLE STREET
P.O. BOX 415
MARION, KENTUCKY 42064
270-965-2222
APPELLEE