pursuant to Court order

SUPREME COURT OF KENTUCKY
CASE NO. 2014-CA-000456-DE
(2013-CA-001347)

JEFFREY L. PETTINGILL — APPELLANT

v.

JEFFERSON CIRCUIT COURT
2013-D-501731

SARA YOUNT PETTINGILL — APPELLEE

BRIEF FOR APPELLEE

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CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing was hand delivered this 19th day of February, 2015, to the Clerk, Kentucky Supreme Court, 700 Capitol Avenue, Room 235, Frankfort, Kentucky 40601 and by U.S. Mail, first-class prepaid to Samuel P. Givens, Jr., Clerk, Kentucky Court of Appeals, 360 Democrat Drive, Frankfort, Kentucky 40601; Hon. Christine Ward, Jefferson Circuit Court, Family Division Six (6), 700 W. Jefferson Street, Louisville, Kentucky 40202; and William D. Tingley, William D. Tingley, PLLC, Counsel for Appellant, 200 S. Fifth Street, Suite 601N, Louisville, Kentucky 40202, by the undersigned. I further certify that the Record on Appeal was not removed from the Jefferson County Circuit Clerk, Family Division.

Bryan D. Gatewood

INTRODUCTION

This is a domestic violence case where the trial court appropriately entered a domestic violence order after finding that an act of domestic violence or abuse had occurred and may again occur.

STATEMENT CONCERNING ORAL ARGUMENT

Appellee believes the Court of Appeals gave the merits of this appeal a full and fair hearing and, as such, oral argument is not necessary and would not be helpful to the Court in this case.

STATEMENT OF POINTS AND AUTHORITIES

COUNTERSTATEMENT OF THE CASE

On July 2, 2013, Appellee, Sara Pettingill (Appellee) filed a Domestic Violence Petition/Motion seeking an Emergency Protective Order against her husband, Jeffrey Pettingill (Appellant). **(R. 1-8)**. Appellee's petition detailed several instances of behavior on the part of Appellant that put Appellee in fear for her safety and that of her infant child. **(R. 1)**. Appellee described an instance where Appellant became angry and threw the family pet. She also described Appellant's controlling behavior, saying

> "[H]e (Appellant) locks me out of all the accounts, he hacks my email accounts, facebook, basically any account that I have. He tells me that he knows things I do, he actually has camera set up in the house . . . . He tells me that he is an ex CIA agent but I cannot tell anyone. He has thrown my work phone and completely destroyed it because I made him mad. . . .He told me there is a gun in the house and will not tell me where it is but I have pictures of the multiple boxes of ammunition that he has. He also is a convicted felon so he is not supposed to have any guns at all. He has talked about putting hits on his ex wife that he has domestic violence charges with in Tennessee . . . .

(R. 1-2). Appellee specifically stated "it scares me for him to be around our daughter because he does not show caution around children . . ." She also said "I am scared for me and my daughter's safety . . ." Appellee's petition was granted and an Emergency Protective Order was entered against Appellant. **(R. 10-11)**.

On July 11, 2013, Jefferson Family Court Judge Jerry Bowles conducted a hearing on Appellee's request for a Domestic Violence Order.[1]

The trial court then entered a written Order of Protection on AOC-275.3. **(R 22-24)**. The trial court specifically found: "it was established, by a

[1] The video recording of the hearing was not made part of the record on appeal and was not considered by the Court of Appeals. Accordingly, Appellee makes no reference to the hearing.

preponderance of the evidence, that an act(s) of domestic violence or abuse has occurred and may again occur . . . ." **(R. 23).** The trial court ordered Appellant to remain 500 feet away from Appellee at all times and restrained him from going within 1000 feet of Appellee's home, place of work, parents' home, or Lillian's day care center. **(R. 23).** Appellant was ordered to attend a Batterer's Intervention Program (BIP) and further ordered not to possess or obtain a firearm. **(R. 24).**

The case docket sheet contains the trial court's notations that Appellant had avoided service of the EPO. **(R. 25).** The docket sheet contains the trial court's notations about the presence of lethality factors and the court's conclusion that Appellee was at "extreme risk of physical harm." **(R. 25).**

Appellant sought relief from the order of protection in the Court of Appeals. Appellant raised three assignments of error: (1) that the trial court "abused its discretion and erred as a matter of law when it entered a domestic violence order without evidence of physical abuse" (Appellant's Court of Appeals Brief, p. 2); (2) that the lower court "erred as a matter of law when it based its decision on its perceived presence of the so called domestic violence lethality factors rather than on the standard set forth in KRS 403.720" (Appellant's Court of Appeals Brief, p. 6); and (3) that the trial court acted erroneously "when it took judicial notice of the theory of domestic violence lethality factors." (Appellant's Court of Appeals Brief, p. 7).

The Court of Appeals, by unanimous opinion, affirmed the entry of an Order of Protection. In addressing Appellant's first argument, that the trial court

erred in entering an Order of Protection without evidence of physical abuse, the Court of Appeals noted that the videotape of the hearing had not been transmitted to the Court of Appeals as part of the designated record, stating, "no copy of the videotape has been provided to us, though it appears it should have been certified by the clerk and transmitted to us as part of the appellate record. CR 98(2) [footnote omitted]." (Court of Appeals Opinion, p.6). The Court of Appeals specifically held that the burden of a complete record was on Appellant and it must presume the omitted videotape supported the decision of the trial court:

> It is the duty of the appellant to ensure the record on appeal is "sufficient to enable the court to pass on the alleged errors." *Burberry v. Bridges,* 427 S.W.2d 583, 585 (Ky. 1968). Therefore, we cannot review the actual testimony, but rather, "must assume that the omitted record supports the decision of the trial court." *Commonwealth v. Thompson,* 697 S.W.2d 143, 145 (Ky. 1985).

(Court of Appeals Opinion, p. 6).

The Court of Appeals then rejected Appellant's contention that a lack of physical contact was fatal to the entry of the DVO. (Court of Appeals Opinion, p. 6). The Court went on to reject Appellant's second assignment of error, specifically holding that the trial court employed the correct standard, as set forth in KRS 403.750, in its decision to grant an order of protection. In so holding the Court stated:

> Although the trial court made additional findings on the docket sheet regarding specific instances and examples of Jeffrey's acts upon which it based its decision, those factual findings cannot in any way be seen to indicate the trial court was unaware of the correct standard or made findings based on anything other than the testimony adduced at the hearing. The mere fact that the trial court

> referenced the so called "lethality factors" does not render its decision infirm. Thus, we discern no error.

(Court of Appeals Opinion, p. 7).

Finally, the Court of Appeals considered Appellant's contention that the trial court improperly took judicial notice of the theory of domestic violence lethality factors and that such judicial notice somehow deprived Appellant of the opportunity to question the court's reliance on the theory. Describing this contention as "without merit," the Court of Appeals stated:

> We have thoroughly reviewed the orders entered in this matter and find absolutely no inference by the trial court that it was taking judicial notice of any fact. As previously noted, the trial court identified its factual findings on the docket sheet as being in conformity with the lethality factors, but there can be no reasonable argument that its findings were based on anything other than the evidence adduced during the course of this proceeding. Comparing its findings to the lethality factors does not change the nature or character of the adjudicated facts. The trial court was tasked with determining whether Jeffrey's acts, as alleged by Sara, rose to the level of domestic violence and abuse under the definition set forth in KRS 403.720 sufficient to warrant issuance of a DVO. At the conclusion of the proof, the trial court made specific findings regarding Jeffrey's bad acts before concluding an act or acts of domestic violence had occurred, and entering the DVO. The record is devoid of any indication of the trial court's use of judicial notice in deciding adjudicative or historical facts. Thus, Jeffrey's assertion is without merit.

(Court of Appeals Opinion, pp. 8-9 (emphasis added)).

Appellant sought rehearing in the Court of Appeals, alleging that his constitutional right to a complete review on the record had been violated. Specifically, Appellant claimed that it was the Court of Appeals' responsibility to issue a show cause order to the Jefferson County Family Court for failing to send

the complete record to the Court of Appeals. (Petition for Rehearing, p. 2). The Petition for Rehearing was denied.

Appellant's subsequent Motion for Discretionary Review was granted by this Court on October 15, 2014.

ARGUMENT

I.

APPELLANT FAILED TO COMPLY WITH THE RULES OF CIVIL PROCEDURE REGARDING THE RECORD IN THIS CASE. DESPITE APPELLANT'S ERRORS, THE CASE WAS FULLY REVIEWED BY THE COURT OF APPEALS AND THAT DECISION MUST BE AFFIRMED.

Appellant first complains that he was denied his constitutional right to a full appellate review on the merits because the Court of Appeals did not issue an order to the Clerk of the Jefferson Circuit Court directing him to supplement the record with the missing video recording. For the following reasons, Appellant's argument is without merit.

A. Appellant Failed to Designate the DVO Hearing as Part of the Record Pursuant to CR 98(3).

Prior to the adoption of CR 98, certification of the record on appeal was governed in all cases by CR 75.01. This rule requires an appellant to file a designation of the record, i.e. what parts of the record are necessary for his appeal. In an effort to reduce costs and delay, this Court adopted CR 98, which requires a circuit court clerk to include an electronic recording of any trial in the certified record on appeal. CR 98(2). Appellant maintains that the adoption of CR 98 absolves him of his duty to designate those portions of the record

necessary for his appeal. Appellant states "[u]nder the present rules transmission of the video record of the trial happens automatically once a notice of appeal has been filed . . . with no duty on an Appellant to take any action whatsoever. CR 98(2)." (Appellant's brief, p. 11). Appellant is mistaken.

The adoption of CR 98 made the transmission of a recording of the **trial** of a case automatic. The recording in dispute in the instant case is of a **hearing**, not a trial. As such it is not governed by CR 98(2), but by CR 98(3), the plain language of which expressly imposes an affirmative duty on the appellant to designate those parts of the video record necessary for his appeal: In pertinent part, CR 98(3) states:

> To facilitate the timely preparation and certification of the record as set out in this rule, appellant or counsel for appellant, if any, shall provide the clerk with a list setting out the dates on which video recordings were made for all pre-trial and post-trial proceedings necessary for inclusion in the record on appeal. Designation of the video recordings shall be filed within the ten (10) day time limitation and in the manner described in Rule 75.01(1). Supplemental designation by other parties shall likewise conform with the requirements of Rule 75.01(1).

Clearly, CR 98(3) contemplates designation of the record by the parties in the same manner as required by CR 75.01(1).

Recently, the Court of Appeals considered the designation requirements under CR 98(3). In *Smith v. Smith,* 2014-WL-2154089 (Ky.App. 2014) (copy attached as Exhibit A), the appellant sought review of post-dissolution orders entered by the trial court. She filed a designation of the record pursuant to CR 75.01, but only included the 957 page court file, not any of the video recordings. The appellant contended, as does Appellant in the instant case, that she was not

required to designate the videotapes because CR 98 requires automatic certification and transmission of one videotape within 30 days of the filing of an appeal, "it was not necessary for her to specifically list electronically recorded items on the form for inclusion in the record." *Id.* at 2. Rejecting this argument, the Court of Appeals stated:

> Since Janet did not request any video recordings to be certified for the appeal, they are not part of the appellate record and, thus, we are unable to review them. Moreover, "[i]t has long been held that, when the complete record is not before the appellate court, that court must assume that the omitted record supports the decision of the trial court." *Commonwealth v. Thompson*, 697 S.W.2d 143, 145 (Ky. 1985). Accordingly, our resolution of this appeal is based upon the record provided to us, and we assume the missing portions of the record support the trial court's decision.

Id. at ***2.***

Since Appellant did not request the video recording to be certified for the appeal, it was not part of the appellate record. The Court of Appeals was unable to review it and correctly held, in accordance with longstanding Kentucky law, that the omitted portions of the record must be presumed to support the action of the trial court. *Commonwealth v. Thompson*, 697 S.W.2d 143, 145 (Ky. 1985) ("[i]t has long been held that, when the complete record is not before the appellate court, that court must assume that the omitted record supports the decision of the trial court."); *see also, McDaniel v. Commonwealth,* 341 S.W.3d 89, 96 (Ky. 2011); *Hatfield v. Commonwealth*, 250 S.W.3d 590, 600 (Ky. 2008); *Miller v. Ky. Unemployment Insurance Commission*, 425 S.W.3d 92, 99 (Ky.App. 2013); *Ray v. Ashland Oil, Inc.,* (389 S.W.3d 140, 145 (Ky.App. 2012).

B. The Kentucky Court of Appeals Is Not Responsible for Correcting Errors in the Record.

Assuming, without deciding, that the proceedings in this case constituted a "trial" within the meaning of CR 98(2)[2], Appellant still cannot prevail. Appellant makes the novel argument that the burden of correcting a deficient record rests with the appellate court, in this case the Court of Appeals. He claims that the Court of Appeals failed in its duty to issue a *sua sponte* order to the Circuit Court Clerk regarding the omission of the videotape. Specifically, Appellant states, "[w]hen a circuit court clerk fails to certify and transmit to the Court of Appeals the video record of the trial the remedy is for the Court of Appeals to require compliance of the clerk by appropriate order." (Appellant's Brief, p. 11). Appellant's argument is wholly contrary to Kentucky law and should be summarily rejected.

i. Appellant, by his own admission, had notice that the record was deficient.

As Appellant notes in his brief, the Jefferson Circuit Court Clerk filed a Certification of Record on Appeal on August 23, 2013, a copy of which was served on Appellant. (Appellant's Brief, p. 8, fn.4). This Certification of Record on Appeal, completed on AOC Form 076, appears as the last page of the trial court record.[3] As Appellant notes, the Certification of Record on Appeal indicated that the video recording of the trial court proceedings were NOT included in the record. Appellant filed his brief in the Court of Appeals on

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[2] Appellee acknowledges that the video record of a trial is supposed to be automatically certified and included in the record on appeal by the circuit court clerk under CR 98(2).
[3] A copy of the Certification of Record on Appeal, along with the Index from the trial court record appear in Appellee's Appendix, pp. 1-2.

September 19, 2013[4] (Appendix, p. 4), **27 days after** he was given notice by the Jefferson Circuit Court Clerk that the record was lacking the video proceedings.

Appellant states in his brief that "[i]t was not until the Court of Appeals issued its opinion that the Appellant realized that the Clerk had failed to certify the video record." (Appellant's brief, p. 7). Not only is this contention absolutely refuted by the record, it is in direct contravention to Appellant's own statement that he was served with a copy of the Certification of Record on Appeal on August 23, 2013. (Appellant's Brief, p. 8, fn. 4). Appellant knew that the record was lacking the portions necessary for him to present his case on appeal. He had notice of the missing recording nearly one month before his brief was due. Appellant should have moved the Court of Appeals for an order to supplement the record. The record was incomplete due to Appellant's failure to act. No error occurred.

ii. Nothing in Kentucky jurisprudence requires an appellate court to bear the burden of correcting an appellant's error.

Appellant cannot now be heard to complain because he wholly failed to make sure the appellate record was complete. While he claims that it was the responsibility of the Court of Appeals to fix the deficient record, he has failed to cite any authority for his unique proposition.

Kentucky law has long held that the burden of a complete record is on the party seeking review of a lower court decision. It was incumbent on Appellant to

[4] A copy of the Court of Appeals step sheet showing that the appeal was perfected on September 19, 2013 is attached as Appellee's Appendix, pp. 3-6.

take an affirmative action to be sure the record was complete. In *Burberry v. Bridges*, 427 S.W.2d 583 (Ky. 1968), this Court explained:

> Appellees argue that the appeal should be dismissed because appellant 'having designated only a part of the evidence, the presumption is that the omitted evidence sustains the finding of the court and jury on the issues presented.' *Wells v. Wells, Ky.*, 406 S.W.2d 157 (1966); *Hamblin v. Johnson, Ky.*, 254 S.W.2d 76 (1952). Apparently the only time this presumption does not arise is when the omitted portions of the record were not considered by the trial court or did not influence its decision. *Cadden v. Commonwealth, Ky.*, 242 S.W.2d 409 (1951). When the presumption is present, this court can do no more than determine whether the pleadings support the judgment. *Willis v. Davis, Ky.*, 323 S.W.2d 847 (1959); *Meglemry v. Bruner, Ky.*, 344 S.W.2d 808 (1961). **It is also reasonable to place upon appellant the duty to designate and file a record sufficient to enable the court to pass on the alleged errors.** Federal courts have so held in interpreting Rule 75(a). *T.V.T. Corporation v. Basiliko,* 103 U.S.App.D.C. 181, 257 F.2d 185 (1958); Moore, Moore's Federal Practice, Vol. 7, pp. 3638 and 3644--45. (This was prior to the 1966 amendment to Federal Rule 75, but that amendment changed the rule to conform with actual practice. It did not change the substance of the rule.)

Id. at 585 (emphasis added). *See, also, Chestnut v. Commonwealth,* 250 S.W.3d 288, 303 (Ky. 2008) ("It is incumbent upon Appellant to present the Court with a complete record for review."); *Louisville Rent-A-Space v. Akai*, 746 S.W.2d 85, 87 (Ky.App. 1988) ("In general, an appellant has the duty to make a sufficient record to enable a review of alleged errors."); CR 75.07(5)("It is the responsibility of the appellant or counsel for the appellant, if any, to see that the record is prepared and certified by the clerk within the time prescribed by Rule 73.08); CR 98(3)(b)("It is the responsibility of the appellant to see that the record is prepared and certified by the clerk within the time prescribed by this rule").

Appellant cites no authority that would remotely suggest that the burden of a complete appellate record be shifted to the appellate court. Appellant's specious contention to the contrary must be rejected.

C. Despite the Deficient Record, Appellant Received a Full and Fair Review by the Court of Appeals. His Claim of Constitutional Error is Without Merit.

Finally, Appellant claims he was denied his "constitutional right to a full appellate review of his case on the merits." (Appellant's brief, p. 9). In support of this claim, Appellant relies on *Ready v. Jamison,* 705 S.W.2d 479 (Ky. 1986). As *Ready* has no application whatsoever to the case at bar, Appellant's argument must be rejected.

In *Ready,* this Court considered whether a defect in a notice of appeal, i.e., referencing a post judgment motion rather than the judgment itself, warranted dismissal of the appeal. Holding that dismissal was not the appropriate remedy, the Court stated: "the penalty for breach of a rule should have a reasonable relationship to the harm caused." *Id.* at 482. The penalty in *Ready* was the most extreme – dismissal of the case. The instant case bears no similarity. Appellant failed to put the whole record before the Court of Appeals, but the Court of Appeals gave him a full and fair hearing of his case nonetheless. The Court of Appeals reviewed the pleadings and the judgment and found that the trial court acted correctly in entering a DVO against appellant. In fact, Appellant has not alleged any prejudice whatsoever from the Court of Appeals not viewing the omitted videotape.

Appellant's claims that there was a constitutional error or that he was denied a full review are without merit and must be rejected.

II.

THE COURT OF APPEALS CORRECTLY HELD THAT THE TRIAL COURT DID NOT TAKE JUDICIAL NOTICE OF ANY ADJUDICATIVE OR HISTORICAL FACTS

Appellant next contends that the trial court committed reversible error by taking "judicial notice of the lethality factors for intimate partner violence." (Appellant's Brief, p. 13). As he did in the Court of Appeals, Appellant is confusing judicial notice with judicial knowledge. The decision of the Court of Appeals rejecting this contention is correct and should be affirmed.

The trial court did not take judicial notice of any adjudicative fact at issue in the case under KRE 201. Rather, the court made factual findings that Appellant had committed certain acts. These findings were made from the testimony presented at the hearing and found to be true by the trial court as the finder of fact.

The trial court's characterization of appellant's actions as "lethality factors" is not erroneous in any way. Appellant is confusing judicial notice with judicial knowledge. As noted in *Commonwealth v. Howlett*, 328 S.W. 3d 191, 193, there has long been a difference between judicial notice and judicial knowledge:

> It is axiomatic that judicial notice is different from judicial knowledge. *Shapleigh v. Mier,* 299 U.S. 468, 475, 57 S.Ct. 261, 81 L.Ed.355 (1937). *See also* R.T.K., *Comment Note. –Distinction*

> *between judicial notice and judicial knowledge*, 113 ALR 258 (1938)..."'While **a resident judge's background knowledge of an area may 'inform the judge's assessment of the historical facts,'** the judge may not actually testify in the proceeding or interject facts (excluding facts for which proper judicial notice is taken)." *U.S. v. Barber-Tinoco*, 510 F.3d 1083, 1091 (9th Cri. 2007)(internal citation omitted) (emphasis added).

The trial court in the instant case did not take judicial notice of any historical or adjudicative facts. Rather, the court merely employed its judicial knowledge in the area of domestic violence to characterize Appellant's behaviors **as testified to at the hearing** as "lethality factors." In *Howlett*, the judge declared a fact to be true through the use of judicial notice – i.e. that a burp in the observation period prior to administration of a breath test requires the time period to start over. *328 S.W.3d* at 192. In the instant case, the trial court did not declare any facts to be true – he merely made findings from the evidence presented in the case. The trial court, using its knowledge in the area of domestic violence, made an assessment that Appellant's action put Appellee at "extreme risk of physical harm." Such an assessment is entirely permissible under the doctrine of judicial knowledge.

Appellant's argument fails to specify which **facts** the trial court supposedly took judicial notice of. The facts at issue in this case were those instances of Appellant's conduct and whether they rose to the level of being acts of domestic violence and abuse. The trial court heard proof on the facts at issue and made specific findings as to the acts the court believed Appellant committed. Simply put, Appellant's claim that that the Court took judicial notice of adjudicative or historical facts is absurd.

The Court of Appeals found this claim of error to be wholly without merit. In its opinion, the Court stated:

> We have thoroughly reviewed the orders entered in this matter and find absolutely no inference by the trial court that it was taking judicial notice of any fact. As previously noted, the trial court identified its factual findings on the docket sheet as being in conformity with the lethality factors, but there can be no reasonable argument that its findings were based on anything other than the evidence adduced during the course of this proceeding. Comparing its findings to the lethality factors does not change the nature or character of the adjudicated facts. The trial court was tasked with determining whether Jeffrey's acts, as alleged by Sara, rose to the level of domestic violence and abuse under the definition set forth in KRS 403.720 sufficient to warrant issuance of a DVO. At the conclusion of the proof, the trial court made specific findings regarding Jeffrey's bad acts before concluding an act or acts of domestic violence had occurred, and entering the DVO. The record is devoid of any indication of the trial court's use of judicial notice in deciding adjudicative or historical facts. Thus, Jeffrey's assertion is without merit.

(Court of Appeals Opinion, pp. 8-9).

Appellant asserts "[i]n the instant case the taking of judicial notice lead [sic] to the entry of a domestic violence order against the Appellant." (Appellant's Brief, p. 17). This is simply untrue. The domestic violence order was entered because the trial court found that Appellant had committed numerous acts of domestic violence, **based on the evidence adduced at the hearing.** Appellant's claim must be rejected and the decision of the Court of Appeals affirmed.

III.

THE TRIAL COURT PROPERLY BASED ITS FINDING OF DOMESTIC VIOELNCE AND ABUSE ON THE TESTIMONY PRESENTED AT THE HEARING.

Appellant next complains that the trial court erroneously based its decision to grant a DVO using a "lethality factor risk assessment test as its evidentiary standard . . . rather than the evidentiary standard required by KRS 403.750 as found in KRS 403.720." (Appellant's Brief, p. 18). Appellant further contends that the Court of Appeals erroneously relied on the trial court's use of AOC-275.3 in concluding that the trial court applied the correct evidentiary standard. Appellant claims AOC-275.3 is defective because it does not require the trial court to make specific findings of fact as required by CR 52.01. (Appellant's Brief, p. 20-21). Appellant's contentions are without merit.

A. The Trial Court Applied the Correct Evidentiary Standard in Determining that Acts of Domestic Violence Had Been Committed by Appellant.

The written findings of the trial court following the close of the evidence reflect perfect compliance with the domestic violence statute, KRS 403.715 et.seq. This statute requires a trial court to make two findings: (1) that domestic violence and abuse has occurred; and (2) that domestic violence and abuse may occur again. *KRS 403.750(1).* On the AOC Form 275.3, the trial court found "that it was established by a preponderance of the evidence, than an act(s) of domestic violence or abuse has occurred and may again occur. ." **R. 23.** The trial court went further than the statute requires and made specific findings of the acts committed by appellant that formed the basis of his ruling.

KRS 403.750(1) "requires a court to engage in difficult predictive activity." *15 Ky. Prac. Domestic Relations L. § 5:13.*

> Repeated instances of violence, obsessive and violent behavior on the part of the defendant, the use of a weapon, and patterns of

> domination and control during the relationship can indicate that the defendant poses a very significant threat to the victim. [Footnote omitted]. When the trial court considers the remedies and specific protections available to a victim, it should take into account the presence of these aggravating factors that indicate danger. [Footnote omitted].

Id.

The court in the instant case listed those acts by Appellant that it found placed Appellee in significant danger. Each of the factors listed was specifically testified to at the hearing. As such, Appellant's claim that the trial court's ruling was based on something other than the evidence presented at the hearing is entirely specious and must be rejected.

B. Appellant's Claim of a Deficiency in AOC Form 275.3 is Without Merit.

Finally, Appellant asserts that Court of Appeals erred in relying on the trial court's use of AOC Form 275.3 to support its conclusion that the trial court's findings of fact were sufficient. This contention is also meritless.

AOC Form 275.3 states the evidentiary standard for the entry of a Domestic Violence Order: "For the Petitioner against the above-named Respondent in that it was established, by a preponderance of the evidence, that an act(s) of domestic violence or abuse has occurred and may again occur . . . ." This box was checked on the form by the trial court. Appellant maintains the Court of Appeals improperly relied on this form because the form does not require an explanation of "'why' the trial court reached the legal conclusion(s) it reached . . . ." (Appellant's Brief, p. 20).

What Appellant ignores is that the trial court made detailed findings of the acts on which it based its entry of the DVO. So even if there is some defect in AOC Form 275.3 (and Appellee is in no way conceding that there is), there is no need for this Court to reach that issue because factual findings were made, were placed on the record, and were reviewed and found to be adequate by the Court of Appeals. In other words, everyone in this case knew "why" the trial court ruled the way it did. The matter was properly reviewed by the Court of Appeals and properly affirmed. No error occurred.

CONCLUSION

For the foregoing reasons, the judgment of the Kentucky Court of Appeals should be AFFIRMED.

Respectfully submitted,

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