

IN THE APPELLATE COURT FOR THE CHOCTAW NATION OF OKLAHOMA

BYRON RICHARD GASTON, DEFENDANT/APPELLANT

VS.

LESLIE L. NELSON, PLAINTIFF/APPELLEE

FILED
CHOCTAW NATION OF OKLAHOMA
APPELLATE COURT CLERK

AUG 23 2024

CASE NO. AC-2023-4
APPEALS CASE NUMBER
CASE NO. PO-2023-13
DISTRICT COURT CASE NUMBER

COURT CLERK
BY 

This is an appeal from the District Court of the Choctaw Nation of Oklahoma, the Honorable J. Mark Morrison, presiding from the granting of a protective order pursuant to the Protection from Domestic Abuse Act, 75 *Choctaw Nation Criminal Procedure Code section 60 et seq.*. The Plaintiff filed her Petition for Protective Order alleging that the Defendant had caused or attempted to cause harm to the Plaintiff. The District Court entered a protective order against the Defendant on the 13th day of May, 2023 for a five-year period. A timely appeal commenced in this court. We find that the district court in entering its decision in this matter did not abuse its discretion and the order as entered by the District Court is supported on a sufficient factual basis. Accordingly, this case is affirmed.

AFFIRMED

Chris Jones, Durant, Oklahoma, Attorney for Plaintiff/Appellee

Jason D. May, Ardmore, Oklahoma, Attorney for Defendant/Appellant

OPINION BY GOTCHER, J.

This is an appeal from the District Court of the Choctaw Nation entering a protective order against the Defendant.¹ The Plaintiff and the Defendant were married. The Plaintiff testified at the hearing that on May, 4, 2019, the Defendant grabbed the Plaintiff by her ponytail and jerked her backwards, then threw her into furniture. The Defendant then proceeded to kick the Plaintiff and commit other acts of physical harm to the Plaintiff. The Plaintiff testified to another incident on November 18th, 2018 wherein the Defendant grabbed both of her wrists and threw against the wall. On February 28, 2021, the Defendant caused injury to the Plaintiff wherein she had bruises and a knee injury. The Plaintiff related other potential violations of the Protection from Domestic Abuse Act, but these three acts are the most detailed.

The Defendant testified that he did not hit her, and the Plaintiff had a bad temper. The

¹The court will refer to the parties by their District Court designations.

Defendant further testified that he had not been around her since the divorce that was granted in September of 2021. It was brought out on cross examination that the Plaintiff had broken a window at the Defendant's place of business and had not surrendered a vehicle that had been awarded to the Defendant in the divorce. The Plaintiff had not raised domestic abuse claims in the divorce and was delayed in reporting the same for prosecution. Up until the last domestic abuse incident the Plaintiff had declined to report the abuse or file charges. The Plaintiff testified after counseling and the divorce being filed, she had found the courage, was not as scared, and filed the charges.

It is the policy of the Choctaw Nation of Oklahoma to demonstrate respect for members of the Choctaw Nation and for all people. This policy is codified in *75 Choctaw Nation of Oklahoma Criminal Procedure section 60.1*. That policy, among other things, clearly reflects that the Choctaw Nation shall protect family members from abuse and will not tolerate domestic abuse perpetrated against any person. In reviewing proceedings under the Protection from Domestic Abuse Act, this court will use an abuse of discretion standard. Under the abuse of discretion standard, the appellate court examines the evidence in the record and reverses only if the trial court's decision is clearly against the evidence or is contrary to a governing principle of law.

The Defendant in his Petition in Error raised two issues, that the trial court abused its discretion in finding that the Plaintiff was entitled to a protective order, and the court abused its discretion in finding that the defendant represented a credible threat to the Plaintiff. The term credible threat is contained in the standard form order of the Court as required by *75 Choctaw Nation Code Criminal Procedure Section 60.6(D)*.² The Protection from Domestic Abuse Act provides that an act of domestic abuse can be "Threatening – words or conduct which place another in fear of bodily injury or property damage". *75 Choctaw Nation of Oklahoma Criminal Procedure Code Section 60.2(A)(3)*. The Oklahoma Courts have held that in determining whether or not the threat is real, in addition to the defendant's acts and words, a court may consider the circumstances and environment at the time of the alleged threat and the parties' (1) history, (2) relationship, (3) age, (4) intelligence, (5) health, (6) physical strength, and (7) other similar evidence that a threat is real." Further a threat of imminent physical harm requires a reasonable apprehension of injury, coupled with an apparent ability to execute the threat. *Curry v. Streater* 213 P.3d 550, 2009 OK 5 (Okla. 2009). The Plaintiff testified to the three acts of physical violence that occurred. The Plaintiff testified that the Defendant had threatened her in the past, showed the Plaintiff a burner gun and told her not to file a report of abuse. The Defendant has even placed a tracker device on her vehicle. The Plaintiff, after the last act of domestic abuse, filed felony abuse charges against the Defendant. This pursuit of felony charges occurred after the divorce. The Defendant's past threats and violent actions toward the Plaintiff, coupled with his use of alcohol and drugs along with the defendant's PTSD has the Plaintiff scared of what he might do to her since she filed charges against him. We find that the reasoning in *Curry* about threats to be persuasive and adopt its reasoning. The Choctaw Code defines

²In the standard form order signed in this case at C. (2) Final Order - it states ". . . the Court finds that the defendant represents a credible threat to the physical safety of an intimate partner or child . . ."

threats as action as well as words. Telling the Plaintiff not to file reports of abuse, the actual abuse testified to by the Plaintiff, coupled with the PTSD, alcohol and drug use, the exhibition of a burner gun and the new serious felony charges against the Defendant is certainly circumstantial evidence of a credible threat against the Plaintiff by the Defendant. It is certainly evidence of a reasonable belief by the Plaintiff of a threat against the Plaintiff by the Defendant. We cannot find that under the above standard of review, the Trial Court abused its discretion in making the finding of a credible threat.

In examining the evidence under the above appellate review standard, it is clear that there is evidence supporting the trial judge's ruling that the Plaintiff is entitled to a protective order. The Plaintiff testified to multiple acts of domestic violence. On the other hand, the defendant denied the abuse and introduced evidence which could indicate that the Plaintiff had not suffered abuse in the proceedings. The Plaintiff declined to prosecute any domestic abuse claims until much time had passed. While some of the Plaintiff's actions could possibly be construed to show lack of any credible claims of domestic abuse, the court heard the evidence. The court viewed the witnesses as they testified and was in the best position to determine the credibility of witnesses. Under our standard of review, this court cannot find that the trial court abused its discretion in entering its judgment and must therefore affirm the court's ruling.

CONCUR, PHELPS, C.J., JONES, J.