In the Missouri Court of Appeals
Eastern District

DIVISION FOUR

K.L.H.,	)	No. ED112951
	)	
Respondent,	)	
	)	
v.	)	
	)	
N.R.,	)	
	)	
Appellant.	)	Filed: November 18, 2025

Appeal from the Circuit Court of St. Louis County
The Honorable Jeffrey P. Medler, Judge

This appeal concerns a full order of protection issued by the trial court under section 455.040[1] of the Missouri Adult Abuse Act. K.L.H. alleged that appellant N.R. sexually assaulted her in her home in May 2024 and that when she saw him a few weeks later parked across the street, her fear of another attack led her to file her petition.

N.R. now appeals arguing that at the July 18, 2024 evidentiary hearing, the trial court did not afford him an adequate opportunity to cross-examine K.L.H. in violation of N.R.'s procedural due process rights which rendered inadequate both the statutorily-required evidentiary hearing and the evidence to support the order of protection.

[1] Statutory references are to the Revised Statutes of Missouri (2016).

While we agree that the court failed to give N.R. an adequate opportunity to cross-examine K.L.H. in violation of his procedural due process rights, our hands are tied because N.R. failed to raise this constitutional defect in the trial court which renders the issue unpreserved for appellate review. Therefore, we affirm.

Background

N.R. and K.L.H. were sexually involved in 2022 though the parties dispute whether that relationship was entirely consensual. Then on May 23, 2024, K.L.H. claims that N.R. sexually assaulted her in her home. The parties' testimony conflicts as to what occurred that night. N.R. claims he and K.L.H. had consensual sexual relations in her home and that K.L.H. then became remorseful. For her part, K.L.H. claims N.R. let himself into her home and sexually assaulted her while she resisted. She did not alert the police about this alleged incident at that time nor about the 2022 instances that she also alludes to as being nonconsensual.

About two weeks later, on June 6, 2024, K.L.H. saw N.R. in his vehicle parked across the street from her home and she feared that because N.R. was a neighborhood handyman, he would have more opportunities to be near her. Later that day, after K.L.H alerted the police about the May 2024 incident and about seeing N.R. parked across the street, she filed her petition for an order of protection.

On July 18, 2024, the trial court conducted an adult abuse hearing under section 455.040. N.R. appeared pro se and K.L.H. appeared with counsel. The trial court informed N.R. of his rights, of the potential for criminal charges arising from the

testimony at the hearing, and of his obligation to testify under oath. The trial court also reminded N.R. that he "had the opportunity, if he wanted, to retain counsel or get some other advice," and asked appellant if he had any questions. He asked none.

The court placed both parties under oath and then turned the questioning over to K.L.H.'s counsel who proceeded to conduct her direct examination of K.L.H. Upon its conclusion, the trial court told N.R. that, "Sir, at this time, this is your opportunity to provide testimony and response to the allegations that have been made." The court did not advise N.R. or otherwise announce that K.L.H. was now subject to his cross-examination. N.R. then testified in narrative form as to his version of the events.

The court then invited K.L.H.'s counsel to cross-examine N.R. which she did. Then, counsel asked to redirect K.L.H. Before granting that request, the court told N.R., "this would be your opportunity, if there's anything based on those questions that you'd want [the trial court] to hear." At that point, N.R. briefly related to the trial court certain questions that he had about the substance and veracity of her testimony. Then K.L.H.'s counsel conducted her redirect of K.L.H. which addressed a number of the assertions N.R. had made in his narrative testimony.

Upon the conclusion of that redirect, the court announced, "Anything further from the respondent?" The court did not invite N.R. to cross-examine K.L.H. When N.R. again voiced his disagreement with K.L.H.'s story, the trial court responded, "[I]s this something that you're asking that you want to ask or is this something you're suggesting to me I should take into consideration?" N.R. stated he wanted the trial court to take the questions into consideration. Neither N.R. nor the trial court asked K.L.H. those

questions directly. Ultimately, the trial court found that K.L.H. had proved the allegations of sexual assault and issued its full order of protection.

This appeal follows.

Standard of Review

This Court will affirm a judgment granting a full order of protection unless there is no evidence to support it, it is against the weight of the evidence, or it erroneously declares or applies the law. *S.A.B. v. J.L.R.*, 675 S.W.3d 245, 252 (Mo. App. 2023) (citation omitted). We view the evidence and the reasonable inferences therefrom in the light most favorable to the judgment. *Id.* (citation omitted). "Because the trial judge is in the best position to gauge the credibility of the witnesses, in cases under the Adult Abuse Act, the discretion of the trial court should not often be superseded." *Id*. (citation omitted). "Given the 'potential stigma that may attach to an individual who is labeled a 'stalker' under the Missouri Adult Abuse Act, trial courts must exercise great care ... to ensure sufficient evidence exists to support all elements of the statute before entering a full order of protection.'" *Id.* (quoting *M.L.G. v. R.W.*, 406 S.W.3d 115, 117 (Mo. App. 2013)).

Issues that are not presented to or decided by the trial court are not preserved for appellate review. *Sugar Ridge Properties v. Merrell*, 489 S.W.3d 860, 867-68 (Mo. App. 2016) (citation omitted). Constitutional objections must be made at the first opportunity to be preserved for appellate review. *S.A.B.,* 675 S.W.3d at 254 (citing *State v. Pierce*,

433 S.W.3d 424, 429 (Mo. banc 2014)). "If not raised at the first opportunity in the circuit court, a constitutional claim is waived and cannot be raised here." *Id*.

Pro se litigants are held to the same standard with regard to preserving alleged errors for appellate review. *In re Marriage of Erickson,* 419 S.W.3d 836, 848 (Mo. App. 2013).

Discussion

Point One

N.R. claims the trial court violated his procedural due process rights by failing to give him an adequate opportunity to cross-examine K.L.H. We agree but N.R. failed to preserve the issue and therefore we must deny his appeal and affirm. *S.A.B.,* 675 S.W.3d at 254.

N.R. requests plain error review in this civil case. Under Rule 84.13(c), plain errors – that is, errors that are clear, obvious, and evident – affecting substantial rights may be considered on appeal, in the discretion of the court, though not raised or preserved, when the court finds that manifest injustice or miscarriage of justice has resulted therefrom. *Holmes v. Kansas City Pub. Sch. Dist.*, 571 S.W.3d 602, 613 n.4 (Mo. App. 2018). Plain error in a civil case requires reversal where the error is so egregious as to weaken the very foundation of the process and seriously undermine confidence in the outcome of the case. *Flood ex rel. Oakley v. Holzwarth*, 182 S.W.3d 673, 680 (Mo. App. 2005).

We decline N.R.'s plain error review request because he has not demonstrated manifest injustice or that the trial court's handling of the evidentiary hearing was "so egregious as to weaken the very foundation of the process." *Id.*

Section 455.040.1 requires that before a trial court may issue an order of protection, it must have a hearing at which procedural due process requirements apply. *E.H. v. A.I.*, 621 S.W.3d 684, 687 (Mo. App. 2021). Due process means parties have the opportunity to be heard. *C.B. v. G.B.*, 701 S.W.3d 699, 673 (Mo. App. 2024). The right to be heard includes the right to "an effective opportunity to defend by confronting adverse witnesses." *Doughty v. Dir. of Revenue*, 387 S.W.3d 383, 387 (Mo. banc. 2013) (quoting *Goldberg v. Kelly*, 397 U.S. 254, 267-68 (1970)). When a party is unable to present a witness or to cross-examine an adverse witness, this Court has found that it is not a proper hearing and any order entered thereafter is not based on sufficient evidence. *Grist v. Grist*, 946 S.W.2d 780, 782 (Mo. App. 1997). Such an improper hearing violates the right to procedural due process. *E.H.*, 621 S.W.3d at 688.

Nevertheless, to determine whether what occurred here might constitute one of the rare instances of plain error in a *civil* case, we turn to the record of the hearing to elucidate what went right and what went wrong. First, what went right. Of course, the court called the hearing required by section 455.040.1 and properly advised N.R. that he would be under oath and that given K.L.H.'s sexual assault allegations, his testimony might bear certain legal risks for him and the court gave him the opportunity to continue the matter in order to get a lawyer. He chose not to. Then the court put both parties under oath and allowed each to tell their stories. So far so good.

Next, what went wrong. Although the court readily invited K.L.H.'s counsel to cross-examine N.R. and then to redirect her own client, the court was far less accommodating and solicitous of N.R., the unrepresented party in the matter, in those regards. Instead of simply announcing "cross-examination" at the conclusion of K.L.H.'s initial direct testimony or at the conclusion of her redirect examination by her counsel to indicate to N.R. that now was his opportunity to cross-examine K.L.H., the court somewhat vaguely and obliquely asked N.R. if he had anything he wanted the court to hear. And even after N.R. raised some issues he had with K.L.H.'s testimony, the court's response remained murky – "[I]s this something that you're asking that you want to ask or is this something you're suggesting to me I should take into consideration?" – instead of directing N.R. to simply "Ask her."

We are cognizant of the demands put on trial judges when conducting hearings involving pro se litigants particularly given the mandate that pro se litigants be held to the same rules and standards as represented parties including in regard to preserving claimed errors for appellate review. *Erickson,* 419 S.W.3d at 848. At the same time, our courts have also recognized that because the Act requires the trial court to determine "the credibility of the potential for violence," *Parkhurst v. Parkhurst*, 793 S.W.2d 634, 637 (Mo. App. 1990), the trial court is expected to take a more active part in the hearing than otherwise would be the case with trial counsel present. *E.H.* 621 S.W.3d at 688; *Brown v. Yettaw*, 116 S.W.3d 733, 736 (Mo. App. 2003). In *Brown,* the court noted "because both parties appeared pro se … the trial court had to take a more active part in the hearing than otherwise would be the case with trial counsel present" in the form of having "a

greater role in the examination of witnesses in the event the parties fail[ed] to do so." 116 S.W.3d at 736.

Here, the court provided more guidance to the represented party than to N.R. When N.R. spouted his questions, the court only asked him what he meant to do with them. Again, the court's unequivocal response should have been to direct N.R. to direct those questions to K.L.H by way of cross-examination.

Still, N.R. has failed to satisfy our exacting plain error review standards in civil cases because he has failed to show how his cross-examination of K.L.H. that the court erroneously denied would have changed the outcome of this case.

Point Two

Point two is critical of the same conduct of the trial court but instead of claiming it constituted a constitutional due process violation, N.R. claims it violated the court's statutory obligation under section 455.040.1 to conduct an adversarial hearing. Again, this argument was not preserved and we decline to review because it fails to satisfy our plain error review standards in civil cases. *Flood ex rel. Oakley*, 182 S.W.3d at 680.

Conclusion

For the above-stated reasons, we affirm the trial court's order of protection.



JAMES M. DOWD, JUDGE

Rebeca Navarro-McKelvey, Presiding Judge, and
Gary M. Gaertner, Jr., Judge, concur.