

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

A.S. AND B.S.

**v.
TATE DECKER**

RESPONDENTS,

APPELLANT.

DOCKET NUMBER WD71680 Consolidated with WD71681
DATE: August 10, 2010

Appeal From:

Boone County Circuit Court
The Honorable Leslie M. Schneider, Judge

Appellate Judges:

Division Three: Victor C. Howard, Presiding Judge, Thomas H. Newton and Gary D. Witt,
Judges

Attorneys:

J. Zachary Bickel, Kansas City, MO and Josh Oxenhandler, Columbia, MO, for respondents.

Susan E. Block and Alan E. Freed, St. Louis, MO, for appellant.

MISSOURI APPELLATE COURT OPINION SUMMARY

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v.

TATE DECKER,

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No. WD71680 Consolidated with WD71681

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Before Division Three: Victor C. Howard, Presiding Judge, Thomas H. Newton, Judge and Gary D. Witt, Judge

Tate Decker and A.S. had a child together in 2005, and since that time their relationship has ended. A.S. is now remarried to B.S. A.S. and B.S. sought and were granted full orders of protection against Decker from the trial court under Missouri's Adult Abuse Act. Decker now appeals the entry of these orders of protection.

AFFIRMED IN PART, REVERSED IN PART.

Division Three holds:

In Point One, Decker argues that the trial court erred in entering a full order of protection in favor of B.S. because B.S. failed to prove his allegations of stalking as required by Section 455.020 of the Missouri Adult Abuse Act. A full adult order of protection may only be granted where the petitioner was either subjected to abuse by a present or former adult family or household member, as defined by the statute, or has been subjected to stalking.

B.S.'s only relationship to Decker is that he is now married to A.S. As such, B.S. does not qualify as a present or former adult family or household member under Section 455.010(5). Therefore, in order to qualify for a full adult order of protection, B.S. must show he has been subjected to stalking.

To prove stalking, one must show repeated acts of purposeful conduct that did cause and would have caused alarm to a reasonable person. The person seeking the order must be the direct victim of the stalking behavior in order for the conduct to support an entry for an order of protection. At trial, evidence of only one instance of stalking behavior was proven. Therefore, since B.S. did not show Decker engaged in repeated acts of purposeful conduct, the trial court's entry of a full adult order of protection against Decker on B.S.'s behalf was a misapplication of the law. The Judgment of this Full Order of Protection is reversed.

In Point Two, Decker argues the trial court erred in entering a full order of protection against Decker on A.S.'s behalf because the Order was not supported by competent and substantial evidence and was against the weight of the evidence because A.S. failed to

demonstrate a knowing course of conduct aimed toward her that served no legitimate purpose. Secondly, Decker argues that A.S. failed to show she suffered from substantial emotional distress.

A.S. has a child with Decker and as such she qualifies under Section 455.010(5) as a family or household member. Therefore, A.S. need only show she was subjected to abuse to be entitled to an order of protection.

Abuse is defined in Section 455.010 to include, among other things, harassment. Harassment is further defined as repeatedly engaging in purposeful or knowing conduct, which serves no legitimate purpose, actually did cause substantial emotional distress, and would cause such distress in a reasonable person.

A.S. testified at trial to numerous acts that were sufficient to support a finding that A.S. was subjected to abuse by Decker. Decker had recently been on probation for a period of two years for offensive touching of A.S. Decker contacted her numerous times for purposes not associated with the child, even though such conduct violated the terms of his probation. Decker refused to let A.S. speak to the child when she was in Decker's custody and Decker threatened to come over to A.S.'s home to pick up the child when he had no right to do so and threatened to "bring as many people as it takes." The trial court's determination that A.S. was subjected to abuse by Decker is supported by the evidence adduced at trial. A.S. testified to numerous examples of conduct that served no legitimate purpose and caused A.S. emotional distress.

Decker claims the trial court erred in finding A.S. provided sufficient proof of substantial emotional distress. Substantial emotional distress is a significant amount of emotional distress resulting from offending conduct that is greater than that normally experienced in everyday life. A.S. testified that Decker's actions made her very scared and she called and went to the police on multiple occasions the evidence must be considered in the context of the history between A.S. and Decker. Accordingly, the evidence adduced at trial was sufficient to support the trial court's finding that she suffered substantial emotional distress and that a reasonable person would have suffered such distress as well. Point denied.

Opinion by: Gary D. Witt, Judge

August 10, 2010

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