

IN THE COURT OF APPEALS OF TENNESSEE
EASTERN SECTION

FILED

April 28, 1997

Cecil Crowson, Jr.
Appellate Court Clerk

CHARLOTTE BAUGUS,) C/ A NO. 03A01-0911-CV-00365
)
Appellee-Petitioner,) KNOX CIRCUIT
)
v.) HON. BILL SWANN,
) JUDGE
DOYLE BAUGUS,)
) AFFIRMED AND
Appellant-Respondent.) REMANDED

THEODORE KERN, KNOXVILLE LEGAL AID SOCIETY, Knoxville, for
Appellee-Petitioner.

ROLAND E. COWDEN, Knoxville, for Appellant-Respondent.

O P I N I O N

Franks. J.

In this action appellee was granted an *ex parte* order of protection pursuant to T.C.A. §36-3-601, *et seq.*, but the order expired prior to the mandated date of hearing. Subsequently, the Trial Judge, upon an evidentiary hearing, issued an order of protection against appellant.

Appellant's issue is framed thus:

whether the Trial Court had subject matter jurisdiction of a petition for an order of protection, when it failed to hold a mandated hearing within the required ten day period.

The Trial Judge held the underlying petition for the order remained in effect, and acted upon the petition and evidence in granting the subsequent order. We agree that the Trial Court had jurisdiction of the matter.

Appellee insists that the matter remained by the Trial Court after expiration of the *ex parte* order because this interpretation of the statute is consistent with the legislative intent to protect victims of domestic violence.

The statute provides in pertinent part:

§36-3-605. Protection order - Extension - Hearing - Costs and attorney's fees. - (a) Upon the filing of a petition under this part, the courts may immediately, for good cause shown, issue an *ex parte* order of protection. An immediate and present danger of abuse to the petitioner shall constitute good cause for purposes of this section.

(b) Within ten (10) days of service of such order on the respondent under this part, a hearing shall be held, at which time the court shall either dissolve any *ex parte* order which has been issued, or shall, if the petitioner has proved the allegation of abuse by a preponderance of the evidence, extend the order of protection for a definite period of time, not to exceed one (1) year unless a further hearing on the continuation of such order is requested by the respondent or the complainant in which case, on proper showing of cause, such order may be continued for a further definite period of one (1) year after which time a further hearing must be held for any subsequent one-year period. Any *ex parte* order of protection shall be in effect until the time of the hearing. If no *ex parte* order of protection has been issued as of the time of the hearing, and the petitioner has proven the allegation of abuse by a preponderance of the evidence, the court may, at that time, issue an order of protection for a definite period of time, not to exceed one (1) year.

No reported case has been cited interpreting this statute.

There is no indication in the statute that the legislature intended that the Court would lose jurisdiction if it did not act on the matter within the ten day time frame albeit the restraining order would lose its efficacy, nor is there any suggestion that the Court would lose jurisdiction to issue an order subsequently. The statute provides if no *ex parte* order of protection has been issued prior to the time of the hearing, the Trial Judge is expressly authorized to issue the order of protection upon proof of abuse by a preponderance of evidence. Accordingly, we hold that the Trial Court retained jurisdiction to issue the protective order.

We remand, with cost of the appeal assessed to the appellant.

Herschel P. Franks, J.

CONCUR:

Houston M Goddard, P. J.

Don T. McMurray, J.