

IN THE SUPREME COURT OF THE STATE OF DELAWARE

ELLEN KANE, ¹	§	
	§	No. 68, 2012
Respondent Below-	§	
Appellant,	§	Court Below: Family Court
	§	of the State of Delaware in and
v.	§	for Kent County
	§	
NELSON KANE,	§	File No. CK11-02631
	§	Petition No. 11-28477
Petitioner Below-	§	
Appellee.	§	
	§	

Submitted: July 16, 2012
Decided: August 22, 2012

Before **BERGER, JACOBS**, and **RIDGELY**, Justices.

O R D E R

This 22nd day of August 2012, it appears to the Court that:

(1) Respondent-Below/Appellant Ellen Kane (“Wife”) appeals from a Family Court order granting a Petition for Order of Protection From Abuse (“PFA”) filed by Petitioner-Below/Appellee Nelson Kane (“Husband”). Wife contends that the Family Court abused its discretion by failing to grant her request for a continuance at the October 4, 2011 hearing on the PFA petition. We find no merit to Wife’s appeal, and affirm.

¹ This Court *sua sponte* assigned pseudonyms to the parties by order dated February 13, 2012. Supr. Ct. R. 7(d).

(2) On September 19, 2011, Husband filed a PFA petition against Wife. Husband later testified that Wife had pointed a loaded gun at him and attempted to pull the trigger. The same day that Husband filed his petition, the Family Court issued a temporary *ex parte* PFA order against Wife. A hearing on the matter was scheduled initially for September 27. Wife was served with the petition and notice of the hearing on September 22, at Baylor Women's Correctional Institution ("BWCI"). But, because Wife was not transported from BWCI to the September 27 hearing, the hearing was rescheduled and the temporary *ex parte* order was continued to October 4, 2011.

(3) At the beginning of the October 4 hearing, Wife requested a continuance in order to gather her witnesses and prepare her case. Wife was incarcerated on criminal charges relating to the events leading up to the PFA, and stated that she could only post bail to gather her evidence if Husband returned a vehicle to her.

(4) The Family Court commissioner denied Wife's request to reschedule the hearing, stating:

[I]t doesn't appear to the court that there is any date to which the court could reliably reschedule the matter. And it doesn't appear that [Wife] is able to provide the court with any information regarding when she would be able to do the things that she wishes to do to prepare.

The matter proceeded. The Family Court heard testimony from Husband and Wife, and concluded that Husband had proven by a preponderance of the evidence that Wife committed acts of abuse against him. The Family Court issued a PFA order. Wife filed a Request for Review of a Commissioner's Order based on the commissioner's failure to grant the continuance. The Family Court denied the appeal and accepted the commissioner's PFA order. This appeal followed.

(5) This Court reviews the Family Court's denial of a request for a continuance for abuse of discretion.² Wife argues that the Family Court should have granted her request for a continuance because she was not given notice of the rescheduled October 4 hearing until the evening before, and did not have the opportunity to contact her witnesses regarding the hearing. She further argues that Husband would not have suffered any prejudice from a postponement.

(6) We find no abuse of discretion on these facts. Wife was served with copies of the PFA petition, related documents, and the hearing notice on September 22, 2011. She was thus on notice that a PFA hearing was set to occur in the near future. Although the scheduled September 27 hearing did not proceed as planned, the postponement afforded her an extra week to prepare. Moreover, Wife failed to identify for the Family Court any particular witness that she intended to call at a future hearing, or would have called at the October 4 hearing if provided

² *Stevenson v. Simons*, 2006 WL 2048487, at *2 (Del. July 21, 2006) (citing *Weber v. Weber*, 1988 WL 93433 at *2 (Del. Aug. 5, 1988)).

with earlier notice. Nor could Wife inform the Family Court with any certainty when she would be prepared for a future hearing, due to her incarceration and pending criminal proceeding. The Family Court did not abuse its discretion in declining to grant the continuance in these circumstances.

NOW, THEREFORE, IT IS ORDERED that the judgment of the Family Court is **AFFIRMED**.

BY THE COURT:

/s/ Henry duPont Ridgely
Justice