

Circuit Court for Cecil County  
Case No. C-07-FM-21-808507

UNREPORTED

IN THE COURT OF SPECIAL APPEALS  
OF MARYLAND

No. 347

September Term, 2021

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MARCUS CROSSAN

v.

ALEXIS CROSSAN

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Arthur,  
Leahy,  
Eyler, James R.,  
(Senior Judge, Specially Assigned)

JJ.

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Opinion by Eyler, J.

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Filed: November 9, 2021

\*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

This case arises from a petition for protection from domestic violence filed on May 4, 2021, in the District Court of Maryland for Cecil County, by Alexis Crossan, appellee, against her husband, Marcus Crossan, appellant.<sup>1</sup> Alexis sought protection for herself and the couple's three minor children. The district court issued a temporary protective order and Marcus was served with it on Friday, May 7, 2021. The court determined that there was "an existing order or request for relief similar to that being sought in these proceedings," and, in "the interests of justice" transferred the case to the Circuit Court for Cecil County, where a final protective order hearing was scheduled for Monday, May 10, 2021.

Marcus did not appear at the hearing on the final protective order, but his attorney appeared and requested that the temporary protective order be extended and the hearing continued so that Marcus could attend. Marcus's attorney represented that Marcus worked in the medical field, was in Virginia, and could not attend the hearing on short notice. That request was denied and the case proceeded in Marcus's absence. The court granted the final protective order, established visitation between Marcus and the minor children, and ordered Marcus to pay emergency family maintenance in the amount of \$4,000 per month. This timely appeal followed.

### **ISSUES PRESENTED**

Marcus presents the following two issues for our consideration:

- I. Whether the circuit court erred in failing to postpone a final protective order hearing for a party that was unavailable and consenting to an extension of the temporary order; and,

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<sup>1</sup> For ease of reference, we shall refer to the parties by their first names.

II. Whether the trial court abused its discretion in awarding emergency family maintenance via a final protective order without determining the parties' need versus ability to pay said maintenance.

For the reasons set forth below, we shall affirm.

### **FACTUAL AND PROCEDURAL BACKGROUND**

It is undisputed that the parties are involved in a divorce action that was filed in the Circuit Court for Cecil County on September 15, 2020. At the time of the May 10, 2021 hearing on the final protective order that is the subject of this appeal, the parties had not separated and were “still living in the same house.” Marcus’s attorney advised the court that Marcus was working two jobs in “the medical field,” one of which was a contractual position in Virginia. Marcus had been served in Virginia with notice of the hearing on the Friday preceding the Monday hearing. He was unable to “make arrangements on such short notice to have replacements” at his place of employment, would be back in Maryland on Thursday, and would agree to extend the temporary protective order so that the hearing could be postponed to a later date. Counsel for Alexis opposed the request for a postponement. Counsel argued that the four-hour drive from Virginia was “accomplishable . . . in two days” and noted that Marcus had not appeared for two prior virtual proceedings. The court denied Marcus’s request for a postponement stating, “he should have been here, that’s the problem I have. I’m not operating on Mr. Crossan’s schedule, we’re operating on the court’s. The court’s going to proceed over your objection.”

Alexis was the sole witness to testify at the hearing. She acknowledged that there was tension between her and Marcus, that it had been escalating, and that Marcus had an apartment in Newport, Virginia. Alexis testified about an incident that occurred at the family home in Cecil County on the Tuesday prior to the hearing, which led her to seek protection from domestic violence, stating:

Marcus and I were having a disagreement over several issues of that day. We were having financial – there were some financial issues over a medical bill getting paid. Some furniture issues over a dumpster that he had placed in the yard to get rid of things, and him wanting to – telling me he was taking the kids out of state in June, um. He was working – had said he was going to go out and work in the yard. He came back several times. I was sitting at the table, actually getting an email together on my phone to [my attorney]. He came in with a pair of shears and came at me at the table. I got up and stood at the table and he had the shears in both hands, shaking it at my face and saying, “He can’t wait to fuck me. He can’t wait til [sic] I die. He can’t wait til I’m dead.” At that point I backed away and grabbed my phone, and he said, “I can’t call the police cause it’s his house.” I got dressed and checked on my son who was in virtual school. He was fine, he had his ear buds in so I don’t think he heard anything and I left the house.

Alexis testified that Marcus had never done anything of that nature before, that she was afraid, and that she thought he was going to hurt her. She acknowledged that the shears were a few inches from her face, that Marcus never actually touched her, and that she did not call the police.

At the time of the incident, the parties’ daughters were attending in-person school and their son was on the second floor of the home attending virtual school. According to Alexis, after the incident, the parties’ son appeared to be agitated. When Alexis left the home, she did not take her son with her. Alexis drove to the district court in Elkton and obtained a temporary protective order. Thereafter, she picked up her daughters from school

and drove back to the family home. Alexis saw Marcus's vehicle there, so she left and took the children to a park for about an hour and a half. When she returned to the home, Marcus was no longer there. On cross-examination, Alexis acknowledged that Marcus worked nights, that she did not expect him to be home throughout the night, but she knew he would return to the house at some point. The following morning, Marcus returned to the home. Alexis went into the basement and called the police. She then gathered the children and told them they were going to leave the house and go to a McDonald's restaurant. Marcus told Alexis that if she called the police "there's no money."

Alexis testified that she was the primary caretaker of the parties' three children, that Marcus worked about 72 hours per week, and that he made about \$180,000 per year. Alexis, a nurse, worked two to three shifts per month, as needed, at Harford Memorial Hospital. She earned about \$500 per month.

Counsel for Marcus objected to any testimony pertaining to emergency family maintenance because it had not been requested in the petition and Marcus was not on notice that it would be addressed at the hearing. The court deferred ruling on Marcus's objection and received evidence from Alexis.

Alexis testified that there were two mortgages on the family home, one with a monthly payment of "about \$2,200" and the other with a payment of "about \$400.00." The gas and electric costs were "about \$300.00 a month," the cable and internet cost "about maybe \$410.00" per month, and a land line cost \$50.00 per month. According to Alexis, groceries cost "about \$400.00 a week" and she spent "about \$50.00 a week" on gas for her vehicle. She stated that Marcus stayed in the family home about two times per week and

that she did not own any other homes in the area. She requested family maintenance in the amount of \$4,500 per month.

Alexis also testified, as follows, about an incident relating to the parties' finances that occurred on the same day as the incident involving the shears:

[COUNSEL FOR ALEXIS]: . . . has Mr. Crossan ever made threats with regard to finances and/or credit cards?

[ALEXIS]: Yes.

Q. When's the last time he did something like that?

A. Tuesday.

Q. This past Tuesday?

A. Yes.

Q. What did he say?

A. My daughter has a physical therapy bill that needs to be paid so that she can restart physical therapy. We had an appointment on Monday. When I said I was going to – I asked him earlier – I'd given him that bill before to pay because he's supposed to be paying the bills. When I asked that morning if it was paid, he said, "If I gave him a bill, it was paid." When I went to make the appointment I had over a \$600.00 balance. He stated, "If" – I told him, "I was going to pay it," and he said, "If I had that much money left over he was giving me too much money," and I said, "I'd put it on the credit card," and he had told me before the credit cards were – he had gotten rid of the credit cards. What he had done was turned them off and then re-turned them on. And when I told him "I knew that is what – was what he had done," he said, "He would turn them off again," and he did.

Q. What do you mean by, "Turn the credit card off?"

A. There is something on the app like if you think you lost your phone, I mean, your credit card, you can like just switch a button, slide it over to turn it off, and I get – because our accounts were linked, I get emails when he does that.

Q. Has Mr. Crostan – Crossan taken actions like that in the past?

A. Nah.

Q. I'm sorry?

A. Not with the credit card, no.

Q. With any other financial resources?

A. He has told me before, "If I didn't do something he would cut off the money."

Q. Okay, and that means not put money into the joint account?

A. Yes.

At the conclusion of the hearing, counsel for Marcus proffered that if Marcus had been at the hearing, he would have agreed there had been an argument, but would have denied the allegation pertaining to the shears. He asked the court to note that there was a pending divorce action and that the parties were still living in the same house. He pointed out that although Alexis claimed she was afraid, she did not call the police, left her son in the house when she went to the district court, and later returned to the house. Counsel argued:

These protective orders are – your Honor knows how serious they are. They incur criminal penalties if they're violated. They're often used as a way to obtain custody without going through a custody proceeding, receive maintenance without going through an alimony hearing. I think that's what's happening here. I think this is being used as a way to get him out of the house. Your Honor, that's more appropriate in the context of the divorce case. With regards to the emergency family maintenance, your Honor, this court has to treat it like a Pendente Lite standard need versus ability to pay. There has been absolutely no testimony, that's part of the problem with Mr. Crossan not being here, there's been no testimony about his ability to pay. There's been testimony that he's got another apartment. We don't know what his expenses are. We don't know what he's still covering in terms of

bills for the house. We don't know any of that and without having that piece of the equation the court can't determine what the need versus the ability to pay is.

Counsel for Alexis argued that the standard of need versus ability to pay did not apply in an emergency family maintenance situation and that the court should "use it's best judgment to determine whether or not family maintenance is warranted, and if somebody wanted to tell the court that he did not have any financial resources in order to pay, then he comes to court to do so."

The court found that there were

reasonable grounds to believe that the respondent, Mr. Crossan, put his wife in fear, obviously reasonable fear, for her safety and maybe life. He brandishes, in my view, brandish is the word, a set of shears and talks about her dying at the same time. I think that's entirely reasonable and I think she has established beyond a preponderance of the evidence to that affect [sic].

The court determined that Marcus "decided not to show up" at the hearing and that it was within "the court's inherent authority to grant the relief requested." Although Alexis failed to check the box on the protective order form to indicate her request that Marcus "pay money as Emergency Family Maintenance[,"] the circuit court granted that relief and ordered Marcus to pay emergency family maintenance in the amount of \$4,000.00 per month. In addition, among other things, the court granted Alexis custody of the parties' three minor children and use and possession of the family home. It also ordered that Marcus not contact or attempt to contact Alexis and that he stay away from her and the children with the exception of weekly visitation with the children at the Cecil County visitation center.

## DISCUSSION

Marcus contends that the circuit court abused its discretion in failing to postpone the final protective order hearing because he was unavailable “due to work obligations” in Virginia and consented to an extension of the temporary protective order. He argues that he “did not seek a continuance for mere purpose of delay,” but because “he needed to make arrangements so that the medical facility that he was employed with would not be short staffed.” He maintains that because appellate courts “have consistently emphasized that cases involving illness or bereavement would constitute grounds for the continuance of a case[,] . . . during the period of the pandemic, it would be no less necessary to have medical professionals providing care to patients.”

Alexis counters that Marcus failed to support his request for a continuance with an affidavit or other evidence and that the decision to grant a continuance was a discretionary one that rested with the trial judge, who did not act arbitrarily in this case. She also asserts that counsel for Marcus failed to proffer to the court the testimony or evidence that he would have offered to contradict the evidence she presented.

Requests for continuance or postponement are governed by Maryland Rule 2-508, which provides, in part, that “[o]n motion of any party or on its own initiative, the court may continue or postpone a trial or other proceeding as justice may require.” Md. Rule 2-508(a). Subsection (c) addresses continuances and postponements for absent witnesses and provides:

- (c) **Absent Witness.** A motion for a continuance or postponement on the ground that a necessary witness is absent shall be supported by an affidavit. The affidavit shall state: (1) the intention of the affiant to call the witness at

the proceeding, (2) the specific facts to which the witness is expected to testify, (3) the reasons why the matter cannot be determined with justice to the party without the evidence, (4) the facts that show that reasonable diligence has been employed to obtain the attendance of the witness, and (5) the facts that lead the affiant to conclude that the attendance or testimony of the witness can be obtained within a reasonable time. The court may examine the affiant under oath as to any of the matters stated in the affidavit and as to the information or knowledge relied upon by the affidavit in determining those facts to which the witness is expected to testify. If satisfied that a sufficient showing has been made, the court shall continue or postpone the proceeding unless the opposing party elects to stipulate that the absent witness would, if present, testify to the facts stated in the affidavit, in which event the court may deny the motion.

Generally, the decision to grant a motion for continuance or postponement rests within the sound discretion of the trial court and we “will not disturb a ruling on a motion to continue [or postpone] ‘unless [discretion is] arbitrarily or prejudicially exercised.’”

*Neustadter v. Holy Cross Hosp. of Silver Spring, Inc.*, 418 Md. 231, 241 (2011) (quoting *Dart Drug Corp. v. Hechinger Co.*, 272 Md. 15, 28 (1974)). See also *Touzeau v. Deffinbaugh*, 394 Md. 654, 669 (2006) (in exceptional circumstances it is an abuse of discretion to deny a request for a continuance or postponement).

An abuse of discretion has been defined as ““discretion manifestly unreasonable, or exercised on untenable grounds, or for untenable reasons[,]”” *Touzeau*, 394 Md. at 669 (quoting *Jenkins v. City of College Park*, 379 Md. 142, 165 (2003)), or when a court “acts ‘without reference to any guiding rules or principles[,]’” or its ruling is ““clearly against the logic and effect of facts and inferences before the court[.]”” *Santo v. Santo*, 448 Md. 620, 626 (2016) (quoting *In re Adoption/Guardianship No. 3598*, 347 Md. 295, 312 (1997)). “An abuse of discretion, therefore, ‘should only be found in the extraordinary, exceptional, or most egregious case.’” *Aventis Pasteur, Inc. v.*

*Skevofilax*, 396 Md. 405, 419 (2007) (quoting *Wilson v. John Crane, Inc.*, 385 Md. 185, 199 (2005)).

In *Neustadter*, the Court of Appeals noted that the abuse of discretion standard ““is premised, at least in part, on the concept that matters within the discretion of the trial court are much better decided by the trial judges than by appellate courts[.]”” *Neustadter*, 418 Md. at 242 (quoting *Aventis Pasteur, Inc.*, 396 Md. at 436) (internal quotation marks omitted). Further, so long as the trial court ““applies the proper legal standards and reaches a reasonable conclusion based on the facts before it, an appellate court should not reverse a decision vested in the trial court’s discretion merely because the appellate court reaches a different conclusion.”” *Id.* (quoting *Aventis*, 396 Md. at 436). The issue at hand is whether this case involved such an exceptional circumstance that the trial court’s refusal to grant a continuance or postponement constituted an abuse of discretion. We conclude that it did not.

There was no affidavit or other evidence presented at the hearing that specifically identified Marcus’s job, explained why he was unable to take the day off from work, or showed that he exercised due diligence in preparing to attend the hearing. The Court of Appeals addressed a similar situation in *Phoebus v. Sterling*, 174 Md. 394 (1938). In that case, on the day of trial, the defendant, through his counsel, sought a continuance on the ground that he was prevented by the duties of his employment as Commissioner of Labor and Statistics of Maryland, from being present in court. *Phoebus*, 174 Md. at 396. The motion for continuance, which was not supported by affidavit or other evidence, was denied and, ultimately, judgment was entered against the defendant. *Id.* The Court of

Appeals held that there was no evidence of any abuse of discretion by the trial court in denying the motion for continuance, stating:

[T]here is no evidence of any abuse of discretion by the trial court. Defendant's office gave him no immunity from the ordinary incidents of litigation, the case was not tried until more than two years after it was docketed, he must have had notice of the trial for his attorney was present when it was called, there was no suggestion that he had a meritorious defence, nor was there any attempt to prove the facts upon which his motion for a continuance was based, by affidavit or otherwise.

*Id.* at 397-98.

In the case at hand, there is no dispute that Marcus had notice of the hearing. Marcus failed to provide an affidavit or any other evidence to support his request for continuance. This lack of evidence coupled with the undisputed fact that Marcus had previously failed to appear for two prior proceedings, leads us to conclude that the circumstances of this case are not so extraordinary, exceptional, or egregious as to warrant a finding that the trial court abused its discretion in denying the request for a continuance.

## II.

Marcus contends that the trial court abused its discretion in awarding emergency family maintenance via a final protective order without determining the parties' need versus ability to pay said maintenance. He argues that the petition filed by Alexis did not put him on notice that she was seeking emergency family maintenance and did not include certain required financial information. According to Marcus, the trial court was unable to

determine the need versus his ability to pay, as required by § 4-501(g) of the Family Law Article<sup>2</sup>, absent his presence at the hearing or other evidence of his financial resources.

The issue presented is moot. A matter becomes moot “when there is no longer an existing controversy between the parties at the time it is before the court[.]” *Hammen v. Baltimore Cty Police Dept.*, 373 Md. 440, 449 (2003) (citations and quotations omitted). “Generally, a moot case is dismissed without our deciding the merits of the controversy.” *Coburn v. Coburn*, 342 Md. 244, 250 (1996) (citing *State v. Peterson*, 315 Md. 73, 82 (1989)).

In the instant case, it is undisputed that on June 17, 2021, the parties appeared before the Circuit Court for Cecil County and agreed to the term of a temporary consent order that modified the visitation and family maintenance provisions of the final protective order. The order was executed on August 24, 2021 and entered on the docket the next day. The parties agreed, among other things, that Marcus was no longer required to pay family maintenance as ordered, but instead would pay temporary support and maintenance in the amount of \$2,652.00 per month and that he would be responsible for certain specified bills and expenses including, but not limited to, the monthly mortgage payment, home equity line, utilities, and automobile insurance. Because there is no longer an existing controversy as

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<sup>2</sup> Section 4-501(g) of the Family Law Article provides:

“Emergency family maintenance” means a monetary award given to or for a person eligible for relief to whom the respondent has a duty of support under this article based on:

- (1) the financial needs of the person eligible for relief; and
- (2) the resources available to the person eligible for relief and the respondent.

to the determination of the parties' needs and ability to pay with respect to the emergency family maintenance provided for in the final protective order, the issue presented for our consideration is moot.

**JUDGMENT OF THE CIRCUIT COURT  
FOR CECIL COUNTY AFFIRMED;  
COSTS TO BE PAID BY APPELLANT.**