Circuit Court for Frederick County
Case No. C-10-FM-24-811230

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 1957

September Term, 2024

TRAVIS DIEHL

v.

JESSICA DIEHL-FRIZEN

Friedman,
Zic,
Kenney, James A., III
(Senior Judge, Specially Assigned),
JJ.

Opinion by Kenney, J.

Filed: March 13, 2026

*This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for its persuasive value only if the citation conforms to Rule 1-104(a)(2)(B).

Travis Diehl, appellant, appeals the entry of a final protective order by the Circuit Court for Frederick County for the benefit of ex-wife Jessica Diehl-Frizen.[1] Travis presents two questions for our review, which we have slightly rephrased[2]:

I. Did the circuit court err in finding that there was sufficient evidence of abuse to support the issuance of the final protective order?

II. Did the circuit court err by applying "an impermissible gender-based standard" in determining whether abuse had occurred?

For the reasons that follow, we shall affirm the judgment.[3]

FACTS

On October 17, 2024, Jessica filed a petition for a protective order against Travis, her former husband, based on an incident that had occurred five days earlier. On the petition

[1] For ease in reading only, we will refer to the parties and other individuals by their first names.

[2] In his brief, Travis presented the questions as follows:

1. Did the Trial Court commit reversible error [when] it found that alleged damage to the Appellee's vehicle constituted "abuse" under Maryland law without evidence or testimony showing how the alleged act placed the Appellee in reasonable fear of imminent serious bodily harm as statutorily required?

2. Did the Trial Court commit reversible error and/or abuse its discretion when it articulated and applied an impermissible gender-based standard for determining "abuse" under the Protective Order statute in violation of Article 46 of the Maryland Declaration of Rights?

[3] Because Jessica did not file an appellee brief in this case, she forfeited the opportunity to present argument. *See* Md. Rule 8-502 (discussing the requirements for filing an appellate brief).

form, she checked the "other box" to describe what happened.[4] She wrote that she was sitting in her car with the parties' nine-year-old when Travis "took a deliberate detour to pass [her] car" and "keyed" the passenger side doors. She listed two recent court cases they had been involved in: a March 16, 2020, final protective order for domestic violence and a 2020 divorce case that had been reopened on the issue of custody. She added:

> [Travis] had filed criminal charges against me earlier in the year that were dropped nolle prosequi. We are in a contentious custody battle and the emergency PL hearing for financial support is Nov. 19. Tensions are clearly high and as we approach the hearing in November and the May 2025 custody trial, I don't feel safe continuing to co-parent with [him] without a protective order and firm legal boundaries in place.

When asked to describe any past injuries caused by Travis, she wrote that he had bruised her leg while the 2020 final protective order was in place. The circuit court granted a temporary protective order and ordered Travis to have no contact with Jessica.

At a final protective order hearing on November 21, 2024, both parties, who were represented by counsel, testified. Jessica testified that she and Travis had two children together and that they divorced in 2021. On October 12, 2024, she drove their children, a twelve-year-old and a nine-year-old, to Remsberg Park in Middletown, Maryland for the twelve-year-old's 9:00 a.m. soccer game. When they arrived around 8:30 a.m., she dropped the twelve-year-old off at the soccer field and then went to Dunkin' Donuts with the nine-year-old. When she returned, she parked in the parking area. After parking, Jessica exited

[4] The boxes not checked were kicking; punching; choking/strangling; slapping; shooting; rape or other sexual offense (or attempt); hitting with an object; stabbing; shoving; threats of violence; mental injury of a child; detaining against will; stalking; biting; and revenge porn.

her car and got into the passenger rear seat with the nine-year-old to "hang out" until the game started. She did not observe any damage to her vehicle at that time.

While they were sitting in the car, Jessica heard "a large screeching noise to [her] right." She looked up and saw Travis standing "very close[]" to her car between the front and rear passenger doors. He continued walking along her car and then around the front of her car toward the fields. She testified that she did not get out of her car right away because she "was in shock and also scared because I wasn't sure what was happening at the time." When Travis was a few car lengths away, she got out of her car, saw the damage on the door panels, and started recording Travis on her phone. When the video recording was played for the court, she could be heard yelling, "I cannot believe you just did that. I was in the car with [the nine-year-old,] and you just keyed my car. You walked by and keyed my fucking car. Oh, my God. What the hell?" Travis responded with a "thumbs-up." She called the police. The video recording from her cell phone and the body camera video of the responding police officer were admitted into evidence.[5] The court also considered Jessica's protective order petition.

Jessica testified about the extensive legal proceedings involving the two of them. In 2018, she was granted a temporary protective order against Travis when he had slammed a door that hit her in the temple and hand when she attempted to leave the marital house after learning he was having an affair. She moved to dismiss the final protective order proceedings, however, because they had reconciled and reached an "agreement." She was

[5] The circuit court told Travis's attorney that the video recording appeared to be "a course on . . . how not to respond to a complaint[.]"

granted a final protective order in March 2020 following an evidentiary trial, in which there was evidence that Travis had thrown her to the ground and prevented her from leaving the house with their children as they had agreed to. In 2022, Travis filed a criminal trespass charge against her that was nolle prossed. In addition, in the months preceding the underlying event now at issue, there had been several other judicial rulings adverse to Travis: in August of 2024, the court denied his motion not to raise his child support payments; in September of 2024, the criminal charges he had filed against her for keying his car were nolle prossed; and on October 9, 2024, a procedural motion he had filed in their ongoing custody litigation was denied.

Jessica further testified at the hearing that she did not tell Travis that she had filed the protective order petition because he is "vindictive" and she "didn't want to do anything or say anything to anger him further." On cross-examination, Jessica admitted that she and Travis communicated after the event through the Family Wizard App about the children, but she did not say anything to him about keying her car. She agreed to telling the responding officer she was "frustrated," but not telling him that she was "frightened."

Travis denied walking close to or keying Jessica's car. He testified that he arrived at the park around 9:00 a.m. After parking his car, he began walking toward the soccer fields. At some point, the nine-year-old got out of Jessica's car and said "hi" to him. They exchanged greetings, and he continued toward the soccer field. When he was about sixty feet away, he heard Jessica yelling at him. Turning, he noticed that Jessica was "recording" him. He gave her a "thumbs-up" and continued walking toward the field. He testified that he did not learn that Jessica had filed a protective order against him until he was served.

After hearing the parties' closing arguments, the court found that Travis's version of events was not credible but found Jessica's version was. Finding that Travis had committed abuse by a preponderance of evidence by placing Jessica "in fear of imminent serious bodily harm[,]" the court granted Jessica a one-year final protective order.

DISCUSSION

I.

Travis contends that the circuit court erred in when it found he had committed abuse because, at most, there was only evidence that he damaged Jessica's car. He argues that Jessica did not report to the officer that she was shocked or scared by what had transpired or that their nine-year-old was crying or distressed. Moreover, after the incident, Jessica continued attending events where he was present and engaged in emails with him through Family Wizard without ever mentioning any damage to her vehicle or that she was in fear.

Standard of Review

When reviewing the issuance of a final protective order, we make our own appraisal of the law, but we accept the trial court's findings of fact unless they are clearly erroneous. *See* Md. Rule 8-131(c). We leave the credibility determinations to the circuit court, as it has "the opportunity to gauge and observe the witnesses' behavior and testimony during the [hearing]." *Barton v. Hirshberg*, 137 Md. App. 1, 21 (2001) (quotation marks and citation omitted). In our review, we "consider evidence produced at the trial in a light most favorable to the prevailing party[.]" *Ryan v. Thurston*, 276 Md. 390, 392 (1975). The ultimate conclusion "of the [circuit court] founded upon sound legal principles and based upon factual findings that are not clearly erroneous . . . should be disturbed only if there

has been a clear abuse of discretion." *In re Adoption of Cadence B.*, 417 Md. 146, 155 (2010) (quotation marks and citation omitted). An abuse of discretion occurs when a "ruling is clearly untenable, unfairly depriving a litigant of a substantial right and denying a just result, when the ruling is violative of fact and logic, or when it constitutes an untenable judicial act that defies reason and works an injustice." *Alexis v. State*, 437 Md. 457, 478 (2014) (quotation marks and citation omitted). "[A]n abuse of discretion should only be found in the extraordinary, exceptional, or most egregious case." *Wilson v. John Crane, Inc.*, 385 Md. 185, 199 (2005). *Accord Fontaine v. State*, 134 Md. App. 275, 288 ("[W]here a trial court's ruling is reasonable, even if we believe it might have gone the other way, we will not disturb it on appeal."), *cert. denied*, 362 Md. 188 (2000).

Final Protective Orders

A final protective order may be granted, following a hearing, if the court finds by a "preponderance of the evidence" that certain acts of "abuse" have occurred. Md. Code, Family Law Article ("FL") § 4-506(c)(1)(ii). "Preponderance of the evidence means more likely than not." *C.M. v. J.M.*, 258 Md. App. 40, 56-57 (2023) (cleaned up). "Abuse" is defined broadly in the statute to include, among others: "(i) an act that causes serious bodily harm; (ii) an act that places a person eligible for relief in fear of imminent serious bodily harm; [or] (iii) assault in any degree[.]"[6] FL § 4-501(b)(1). The court found abuse under section (ii).

[6] "The statutory offense of second-degree assault encompasses three modalities: (1) intent to frighten, (2) attempted battery, and (3) battery." *Snyder v. State*, 210 Md. App. 370, 382 (2013). An intent to frighten modality occurs where: (1) a person commits an act (continued…)

In *Katsenelenbogen v. Katsenelenbogen*, 365 Md. 122 (2001), our Supreme Court articulated the standard when determining whether fear is reasonable under FL § 4-501(b)(1)(ii). According to the Court, it "is an individualized objective one – one that looks at the situation in the light of the circumstances as would be perceived by a reasonable person in the petitioner's position[.]" *Katsenelenbogen*, 365 Md. at 138. *See also Hripunovs v. Maximova*, 263 Md. App. 244, 264 (2024). The Court emphasized that "a belief as to imminent danger is necessarily founded upon the [petitioner's] sensory and ideational perception of the situation that he or she confronts, often shaded by knowledge or perceptions of ancillary or antecedent events." *Katsenelenbogen*, 365 Md. at 139 (quotation marks and citation omitted). In other words, in a threatening situation, victims of domestic abuse may not act the same way when they are afraid. Therefore, the issue is not whether their perceptions are right or wrong, "but whether a reasonable person with that background could perceive the situation in the same way." *Id*. The Court elaborated:

> A person who has been subjected to the kind of abuse defined in § 4-501(b) may well be sensitive to non-verbal signals or code words that have proved threatening in the past to that victim but which someone else, not having that experience, would not perceive to be threatening. The reasonableness of an asserted fear emanating from that kind of conduct or communication must be viewed from the perspective of the particular victim. Any special vulnerability or dependence by the victim, by virtue of physical, mental, or emotional condition or impairment, also must be taken into account.

Id.

with the intent to place a victim in fear of immediate physical harm; (2) a person has the apparent ability to bring about the physical harm; and (3) the victim is aware of the impending physical harm. *Jones v. State*, 440 Md. 450, 455 (2014). Proof of a person's intent may be established through direct or circumstantial evidence. *Id*.

The court expressly found that the parties had a "tumultuous" relationship. The record supports an inference that Travis's keying of her car, in light of the past incidents between them, caused Jessica to feel unsafe. That past history of spousal abuse of Jessica made her fear of imminent serious bodily harm reasonable under the circumstances. On the issue of fear generated by the keying of her car, the court found persuasive that Jessica did not get out of the car until after Travis had "cleared" the area, that she had waited five days before filing the protective order, and did not speak to Travis about what had happened.

Travis did not mention or acknowledge a prior history of abuse toward Jessica in his arguments before the circuit court, and he does not do so on appeal. Instead, he urges us to draw a different inference from the evidence, but, as previously stated, it is not our role to reweigh the evidence or make credibility determinations when reviewing a court's findings of fact. It is the circuit court that is "most aptly situated" to do so, and in doing so, it is "'entitled to accept—or reject—*all*, *part*, or *none* of' [a witness's] testimony, 'whether that testimony was or was not contradicted or corroborated by any other evidence.'" *Hripunovs*, 263 Md. App. at 263-64, 269 (quoting *Omayaka v. Omayaka*, 417 Md. 643, 659 (2011)). In the context of Jessica's awareness of their past history, the court, under the individualized objective standard, could reasonably conclude that the actions of Travis that were described and documented at the hearing generated in her a fear of imminent serious bodily harm.

II.

Travis also contends that the circuit court erred because it imposed a legal standard based on sex in its ruling, violating his right to equal protection under the law under Article

46 of the Maryland Declaration of Rights. We question whether this argument was preserved for review, but, assuming, without deciding, that it was, we hold that the argument is without merit.

Travis's contention is directed to the following statement of the court during its ruling:

> And I have to find that it's got to be an act that places Jessica in fear of imminent serious bodily harm. Well, it startles her, it surprises her. She's in the car. She doesn't have any idea what's happening. And then for an unknown inexplicable reason, she sees and feels and hears the scratching on the car. That's scary for a young woman with her daughter. If it was reversed, I think I'd have a lot of problem if it was the man in there and the wife was doing it. Let's say it was reversed. Jessica is walking by and she keys the car while Travis is sitting there with his son or daughter. I would not make the same decision. I'd say yes, it might be destruction of property which is not under the statute. But it's different here. And I look at the size, man versus woman, the size of the two. She doesn't know what's going on.

(Emphasis added.) Travis never objected to the court's statement.

Md. Rule 8-131(a) provides: "Ordinarily, an appellate court will not decide any other issue unless it plainly appears by the record to have been raised in or decided by the trial court[.]" *See DiCicco v. Baltimore Cnty.*, 232 Md. App. 218, 224-25 (2017) (stating that a contention not raised or considered below is not properly before the appellate court).

That said, however, we perceive no error. Not only was the court's remark a small part of ten pages of typed transcript encompassing its ruling, but after making the above remark, the court went on to explain:

> And then I look – if you go back to her petition which I did before, she adds a second page and she writes all this up, and she says, "I don't feel safe continuing to coparent with Travis without a protective order and firm legal boundaries." And [Jessica's attorney] makes a very good argument, the

> Court can consider everything that had transpired up until that Saturday – that October 12th morning. There's been a lot back and forth.
>
> My job – the test is not if I ruin that car, what would I do? Or if a Washington Commander offensive tackle was in that car, what would he do if his ex-wife did it? The test is Jessica. And I have to go with her testimony. Is it reasonable? She said, "I didn't get out of the car. I was scared." That makes sense. That was consistent with what happened that day. And I use the word "unnerving," but it was more than that. I find that it did put her in fear of imminent bodily harm. She didn't know what was next. It wasn't until [Travis] had – I'll say – cleared the area, passed through, that she felt some relief.

The respective size and physical characteristics of the parties are simply two of many factors a court may consider in an individualized fear of imminent serious bodily harm calculus.

Viewing the entirety of the court's ruling, we are persuaded that the court was fully aware of the applicable law, including *Katsenelenbogen*, *supra*, and properly viewed Travis's actions as perceived through Jessica's individualized lens and their past history. *See State v. Chaney*, 375 Md. 168, 179-81 (2003) (restating the long-standing presumption that judges are presumed to know the law and apply it correctly).

JUDGMENT OF THE CIRCUIT COURT FOR FREDERICK COUNTY AFFIRMED.

COSTS TO BE PAID BY THE APPELLANT.