UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1259

September Term, 2013

CAROLINA V. CHELLE

v.

RAMEZ A. GHAZZAOUI

Berger,
Leahy,
Raker, Irma S.
(Retired, Specially Assigned),

JJ.

Opinion by Leahy, J.

Filed: July 6, 2016

This appeal emerges from a 60-count complaint filed by Appellee Ramez Ghazzaoui against his former spouse, Appellant Carolina Chelle, following their divorce in 2011.[1] It is but one in an arduous series of actions filed by the parties against each other since 2008.

Mr. Ghazzaoui filed the complaint in the Circuit Court for Anne Arundel County, including a separate action against Ms. Chelle on behalf of the parties' minor daughter, M.G. Mr. Ghazzaoui alleged a variety of claims, including defamation, assault, battery, false arrest, nuisance, fraud, abuse of process, and intentional infliction of emotional distress ("IIED"). Following a seven-day jury trial, Mr. Ghazzaoui received a $420,825.00 judgment, from which Ms. Chelle appeals.

On appeal, Ms. Chelle asks this Court to consider:

I. "Did the trial court err in failing to instruct the jury to disregard—and continuing to admit—highly prejudicial evidence that was relevant only to unfounded claims by Ghazzaoui that were dismissed mid-trial?"

II. "Did the trial court err in barring evidence of Ms. Chelle's well-founded fear of Ghazzaoui based on years of abuse, which was relevant to whether she reported Ghazzaoui's protective-order violations and ongoing abuse based on genuine fear and with probable cause?"

III. "Is there sufficient evidence to support Ghazzaoui's two abuse-of-process claims (Counts 38 and 47), even though Ghazzaoui proved neither (i) misuse of a legal proceeding by Ms. Chelle, nor (ii) that he was subjected to an arrest or property seizure?"

[1] Mr. Ghazzaoui listed 59 counts in his complaint; however, because he assigned two counts the number forty-two, the total counts are actually 60. The docket addressed the error by listing the two counts as 42A and 42B.

IV. "Is there sufficient evidence to support Ghazzaoui's two IIED claims (Counts 20 and 46), even though the record evidence reflects no "extreme" or "outrageous" conduct by Ms. Chelle?"[2]

We reverse on the third and fourth issues and conclude that there is not sufficient evidence to support Mr. Ghazzaoui's abuse of process or intentional infliction of emotional distress claims. Notwithstanding this, we cannot agree with Ms. Chelle's first and second contentions. Accordingly, we affirm in part, reverse in part, vacate in part, and remand for a calculation of damages.

[2] In his brief, Mr. Ghazzaoui attempted to present three additional questions for this Court's consideration. The questions are as follows:

1. "Did the Trial Court err on January 31, 2013 in dismissing Counts #14, 27, 52, 56 (abuse and misuse of process), #17, 53 (Defamation), and #59 (IIED)?"

2. "Did the Trial Court err by granting in part Appellant Chelle's post-trial '*motion for judgment notwithstanding the verdict, new trial, and revisory power of the court*'?"

3. "Did the Trial Court err in denying Appellee Ghazzaoui's post-trial motion for correction of an arithmetic error in the Jury award?"

We decline to reach these questions because Mr. Ghazzaoui failed to file a cross-appeal within the time allotted. Maryland Rule 8-202(e) ("If one party files a timely notice of appeal, any other party may file a notice of appeal within ten days after the date on which the first notice of appeal was filed or within any longer time otherwise allowed by this Rule."); *see also Maxwell v. Ingerman*, 107 Md. App. 677, 681 (1996) ("if a timely cross-appeal is not filed, we will ordinarily review only those issues properly raised by the appellant"). Ms. Chelle filed a notice of appeal on August 8, 2013. Mr. Ghazzaoui did not file a notice of appeal.

BACKGROUND

The following factual background is derived from testimony given by the parties during a jury trial conducted in the underlying case over seven days in January and February 2013, as well as from the parties' divorce proceeding and prior opinions of this Court.

Ms. Chelle and Mr. Ghazzaoui were married on December 22, 2001, in Montevideo, Uruguay. One daughter, [M.G.], was born to the marriage on December 6, 2003. After encountering marital difficulties in the spring of 2008, Mr. Ghazzaoui requested that Ms. Chelle sign a post-nuptial agreement detailing certain conditions that had to be honored for the couple to remain together.[3] Those conditions were not met to Mr. Ghazzaoui's satisfaction, and on June 14, 2008, he informed Ms. Chelle that he thought they should divorce.

As this Court previously recounted, "[o]n July 1, 2008, [Ms. Chelle] took [M.G.], along with some belongings and [Mr. Ghazzaoui's] computer, and left the marital home. [Ms. Chelle] successfully sought a protective order in the District Court for Anne Arundel County on the basis of alleged abuse by [Mr. Ghazzaoui.]" *Chelle v. Ghazzaoui*, No. 2052/80, Sept. Term 2010/2011, slip op. at 2 (filed January 31, 2012). Ms. Chelle filed a complaint for divorce against him on July 2, 2008. Mr. Ghazzaoui filed a complaint for

[3] Terri Harger, the custody evaluator who was later appointed in 2008 to the divorce and custody case between Ms. Chelle and Mr. Ghazzaoui, characterized the post-nuptial agreement as "very restrictive and degrading." The agreement included, *inter alia*, terms allowing Mr. Ghazzaoui to record all of Ms. Chelle's conversations.

custody on the same day, which he later amended to become a complaint for custody and divorce. The two actions were eventually consolidated in the Circuit Court for Anne Arundel County.

The petition for the July 1 protective order alleged that Mr. Ghazzaoui engaged in abusive behaviors toward Ms. Chelle—including raping her, threating to cut her neck and leave her paralyzed, and extensive monitoring of her whereabouts and correspondence—and requested that he not attempt to contact her or M.G. On July 8, 2008, the final protective order was granted. Thereafter, Mr. Ghazzaoui was swiftly charged in Montgomery County (where he was living at the time) with three counts of violating the protective order—including a charge for re-entering the marital home and contacting Ms. Chelle directly—and one criminal count for stalking Ms. Chelle. These charges resulted in Mr. Ghazzaoui's arrest and detention for two days. The charges were later *nol prossed* on August 14, 2008.

Mr. Ghazzaoui testified at trial that he was then charged in Anne Arundel County on August 18, 2008, with the same offense—re-entry into the marital home—that he was charged with in Montgomery County. According to Mr. Ghazzaoui, this charge was eventually dropped two years later, in 2010.

A second protective order violation was filed against Mr. Ghazzaoui on October 22, 2008, in Howard County. At trial, Mr. Ghazzaoui explained that on that day he was attempting to locate the office of Child Protective Services in advance of an interview scheduled at that office on October 31, 2008. He found the office, knocked on the door

and inquired whether the employee who would be conducting the investigation was available. He was told that she was not, at which time Mr. Ghazzaoui claims he first noticed Ms. Chelle's car in the parking lot. After an exchange with the employee who answered the door, he left the premises. He then discovered that a warrant had been issued for his arrest for violating the protective order, and voluntarily submitted to police custody in Howard County. Mr. Ghazzaoui admitted in his testimony that a police officer from Howard County actually filed the charge, not Ms. Chelle.[4]

During the *pendente lite* hearing in the couple's divorce case held in October 2008, Mr. Ghazzaoui agreed to relinquish custody of M.G. to Ms. Chelle in exchange for Ms. Chelle dropping the protective order.[5] By consent order, the July 1 protective order was dismissed.

"Surveillance"

On the night of November 30, 2008, Mr. Ghazzaoui repeatedly called Ms. Chelle's residence prompting Ms. Chelle to notify the police, who, according to Ms. Chelle, instructed her to petition for a second protective order. Ms. Chelle subsequently petitioned for this protective order on December 1, 2008. At trial, Mr. Ghazzaoui challenged the

[4] Mr. Ghazzaoui alleged in his complaint that this charge was dropped in Howard County District Court on December 17, 2008.

[5] The first of many appeals to this Court arose from this *pendente lite* hearing, where Mr. Ghazzaoui, through an interlocutory appeal, challenged the order of the court approving an interim petition for fees submitted by Barbara Taylor, the court-appointed Best Interest Attorney. This Court affirmed the circuit court. *Ghazzaoui v. Chelle*, No. 1585, September Term 2009, slip. op. (filed November 5, 2010). Although Ms. Chelle was captioned in this case, she filed no brief and did not take a position in the appeal. *Id.* at 1*

cross-examiner's question about his repeated calls to Ms. Chelle on November 30, and Mr. Ghazzaoui was asked to read the first paragraph of the petition into the record:

> "On or before November 30, 2008, [Mr. Ghazzaoui] has been incessantly calling my home and has been threatening me, if I don't answer the numerous telephone calls, we have an agreement that the respondent is entitled to make one call per day around 7:00 p.m. to speak with our daughter. On November 30, 2008, even after respondent has already spoken with our daughter, he harassed me by continuing to call my home at 7:33 p.m., he called again at 8:25 when our daughter was in the bathtub. Then again at 10:02 p.m. and at 10:06. He left a threatening message saying Carolina you asked for it and you are going to get it now and he continued calling at 10:26 p.m., 10:22, 10:28, 10:29."

When asked, "you don't believe you called the 20 or 30 or 40 times that you testified to in front of [the Judge in the divorce proceeding]. . .[,]" Mr. Ghazzaoui responded: "According to my recollection, 10 to 20. According to my testimony before [the Judge in the divorce proceeding], 20 to 30. So it has to be somewhere between 10 and 30, sir." Mr. Ghazzaoui did not deny leaving a threatening message.

As reflected in the following cross-examination testimony, Mr. Ghazzaoui readily admitted that, during the parties' marriage and divorce, he undertook various types of surveillance of Ms. Chelle:

> [MS. CHELLE'S COUNSEL]: Now, you said earlier that it was your investigator who planted the GPS device in 2009, do you recall that?
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> [MR. GHAZZAOUI]: Correct.
>
> [MS. CHELLE'S COUNSEL]: And was your investigator also videotaping the home?
>
> [MR. GHAZZAOUI]: Yes.

> [MS. CHELLE'S COUNSEL]: And you instituted surveillance measures on Ms. Ghazzaoui - - Mrs. Ghazzaoui?
>
> [MR. GHAZZAOUI]: On Ms. Chelle? Various types of surveillance at different points in time, yes. A large number of surveillance at different points in time, yes. A large number of surveillance. Yes.
>
> [MS. CHELLE'S COUNSEL]: What do you mean by a large number? What type of surveillance?
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> [MR. GHAZZAOUI]: Well, we have talked about GPS, we have talked about the private investigator. We have talked about recording my face to face conversations with her. We have talked about tapping her phone line, we have talked about looking into her phone statements, her bank accounts. What else have we not talked about? I think that pretty much covers it. But it was pretty intensive, that is for sure.

Child Abuse Allegations

The custody and divorce case proceeded before a judge in the Circuit Court for Anne Arundel County from 2008 to 2011. *Chelle v. Ghazzaoui*, No. 2052/80, Sept. Term 2010/2011 (filed January 31, 2012), slip op. at 2. During these proceedings Ms. Chelle brought allegations of child abuse against Mr. Ghazzaoui. Ms. Chelle explained during her testimony in the underlying case that when she left the marital home on July 1, 2008, she took with her Mr. Ghazzaoui's computer, allegedly at the urging of her attorney. Sometime after July 17, 2008, Ms. Chelle went to her lawyer's office, where the computer was being held, in order to search it for family pictures. Ms. Chelle testified that, during that search, she came across a folder that contained child pornography. On August 20, 2008, she filed an emergency motion to deny Mr. Ghazzaoui access to M.G. The motion averred that Ms. Chelle had found child pornography and internet chats with minor girls from 1996 on Mr. Ghazzaoui's computer.

After a hearing on the motion, the court ordered that an investigation be conducted by the Anne Arundel County Department of Social Services. The report instructed Mr. Ghazzaoui to cease showering with M.G., which Ms. Chelle had accused him of doing in the custody battle. At that time, the parties agreed to a consent order to allow Mr. Ghazzaoui to resume visitation with M.G.

Around the same time, Mr. Ghazzaoui's computer was turned over to the Maryland State Police for further investigation into the child pornography found on the computer. On October 18, 2008, Ms. Chelle went to the Howard County Police and accused Mr. Ghazzaoui of molesting M.G. Ms. Chelle alleged that she had taken M.G. to her psychologist, Dr. Joan Kinlan, and that M.G. had made a statement to Dr. Kinlan that Mr. Ghazzaoui had made her touch his genitalia. That same day, the Howard County Police deployed officers to conduct an investigatory check on M.G., who was staying with Mr. Ghazzaoui for the weekend. The check revealed nothing amiss, and M.G. remained in Mr. Ghazzaoui's custody. After interviewing M.G., Ms. Chelle, Mr. Ghazzaoui, and Dr. Kinlan, the Howard County Department of Social Services issued a report on December 5, 2008, concluding that the sexual abuse of M.G. was "ruled out."

Alleged Altercations and Further Legal Action Between the Parties

During this time frame, Mr. Ghazzaoui and Ms. Chelle may have been involved in several physical altercations during the times they exchanged custody of M.G. Mr. Ghazzaoui's complaint in the instant action alleged four separate counts of assault by Ms. Chelle against Mr. Ghazzaoui.

In his first allegation, Mr. Ghazzaoui claims that on February 9, 2009, Ms. Chelle attempted to run him over with her car while he was attempting to secure M.G.in her car. He also alleges that, on the same day, after this incident, Ms. Chelle petitioned the Montgomery County district court for a protective order, obtaining a temporary protective order. Mr. Ghazzaoui further avers that this case was transferred to the Circuit Court for Anne Arundel County declined to issue a final protective order.

Second, Mr. Ghazzaoui claims that on May 28, 2010, Ms. Chelle leaped into his car and "assailed" him in an attempt to extract M.G. from the car. According to Mr. Ghazzaoui, this incident resulted in cross-petitions for a protective order. It appears that both protective orders were denied. He also avers that Ms. Chelle pressed a charge of second-degree assault in Anne Arundel County after this incident. After this charge, a warrant issued for Mr. Ghazzaoui's arrest, but the Circuit Court for Anne Arundel County converted this into a summons.

Third, Mr. Ghazzaoui alleges Ms. Chelle assaulted him again on May 13, 2011, in the presence of M.G. and one of M.G.'s friends. He claims that *he* informed the Anne Arundel County Police of the incident and requested that they not arrest Ms. Chelle.

And finally, Mr. Ghazzaoui alleges that on May 25, 2011, Ms. Chelle "attempted to hold [Mr. Ghazzaoui] hostage on the road demanding that he let her extract [M.G.] from his car in the middle of the road in front of [M.G.]'s school."

Bench Opinion

The circuit court issued a written bench opinion on October 8, 2010, followed by a custody order awarding the parties joint legal and shared physical custody. The court, after summarizing the above protective order violations, all of which were *nolle prossed*, made the following findings:

> This is just part of a myriad of unfounded accusations made by [Ms. Chelle] against [Mr. Ghazzaoui]. [Ms. Chelle] has continuously made accusations against [Mr. Ghazzaoui], to anyone who would listen, of rape, pedophilia, possession of child pornography, child abuse, and other inappropriate conduct with and around the minor child. There is no credible evidence to support any of these allegations.
>
> [Ms. Chelle] has accused [Mr. Ghazzaoui] of showering, watching pornography, displaying his genitals, masturbating, and forcing [Ms. Chelle] to have sexual intercourse in the presence of a minor child. No professional evaluation conducted revealed that the minor child was exposed to any of these things. The disposition of the Howard County Department of Social Services case noted that there was no credible evidence [that] an incident involving sexual molestation or exploitation occurred. As far as [the] statement made to the minor child's therapist, Dr. Kinlin, on October 13, 2008, multiple professionals have reviewed the recorded session and all found that Dr. Kinlin was suggestive and leading.
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> * * *
>
> In early to mid-July 2008, [Ms. Chelle] took [Mr. Ghazzaoui]'s computer to her attorney's office and claims that she and the computer expert discovered on-line chats with and about minors of a sexual nature and child pornography. [Mr. Ghazzaoui] denies having conducted any on-line chats with minors or referencing child pornography. He testified that he had a friend visiting his home in 1997, at the time the chats were conducted, who used his computer. The Court finds this testimony credible.
>
> Regarding the child pornography, [Ms. Chelle]'s attorney at the time, Mr. Marvin Liss, Esq., arranged for Plaintiff and Plaintiff's attorney at the time, Samuel Williamnowski, Esq., to review the pornography. Mr. Williamnowski testified that almost immediately after viewing the material, [Mr. Ghazzaoui] responded that the child pornography was not his and they should call the police. He also testified that approximately two weeks later,

> Mr. Liss suggested that they could "make this all go away" if [Mr. Ghazzaoui] would consent to [Ms. Chelle]'s having sole custody of the parties' minor child. [Mr. Ghazzoui] and Mr. Williamnowski rejected any such agreement.
>
> Ultimately, [Ms. Chelle] brought the photographs to the attention of social services, the custody evaluator, Ms. Terri Harger, and the child's best interest attorney, Ms. Barbara Taylor, who alerted the Maryland State Police. The Court does not fault any of these individuals for doing so. [Mr. Ghazzaoui] has consistently denied downloading child pornography. The Maryland State Police found no basis to conclude that [Mr. Ghazzaoui] committed a crime. Following his psychological evaluation, Dr. Gombatz stated that "it would be an error to conclude Mr. Ghazzaoui [is] a pedophile or child molester."
>
> The Court finds credible the testimony of [Mr. Ghazzaoui]'s witness, Mr. Jeffery Gross, regarding the origin of the child pornography. Mr. Gross testified that the child pornography was inconsistent with the adult pornography on the computer and was put on the computer during the period when only [Ms. Chelle] and those under her control had access to the computer. The Court does not find [Ms. Chelle]'s reason for taking [Mr. Ghazzaoui]'s computer credible. Moreover, the Court does not find credible [Ms. Chelle]'s story that she did not know her attorney attempted to use the planted child pornography as a bargaining chip in the parties' custody dispute. . . .
>
> * * *
>
> [Ms. Chelle] used these and other tactics to manipulate the judicial system, limit [Mr. Ghazzaoui]'s access to the minor child, and damage [Mr. Ghazzaoui]'s reputation. [Ms. Chelle] has presented the same baseless accusations to the judicial system, Maryland State Police, Howard County and Anne Arundel County Department of Social Services, multiple mental health professionals, the public school system, friends, countless others, and her own daughter. [Ms. Chelle]'s allegations ultimately resulted in [Mr. Ghazzaoui]'s visitation with the minor child being limited to every other weekend and Wednesday overnights, with the requirement of supervision, for the past twenty (20) months.

(Footnote omitted).

Finally, on March 10, 2011 the court issued a 31-page memorandum opinion and entered judgment of absolute divorce.

Subsequent Litigation

Despite the circuit court's admonition to the parties in its October 8 custody decision that "this conflict must end" and that Mr. Ghazzaoui must "put this behind him so he can parent [M.G.]," Mr. Ghazzaoui proceeded to file lawsuits against numerous other individuals involved in the divorce, including Terri Harger (the court-appointed custody evaluator), Barbara Taylor (the court-appointed best interest attorney), a school bus driver somehow involved, Eilyn Farbergas (a neighbor), and the Anne Arundel County Public Schools.[6] Although most of those cases were dismissed at the trial level, the cases against Ms. Taylor ultimately found their way to this Court twice. *See Ghazzaoui v. Taylor*, No. 2710, Sept. Term 2013 (Filed May 28, 2015); *Ghazzaoui v. Taylor*, No. 1715, Sept. Term 2012 (Filed July 10, 2014).

Ms. Chelle appealed the circuit court's custody decision, challenging the award of joint custody and attorney's fees. *Chelle v. Ghazzaoui*, No. 2052/80, Sept. Term 2010/2011 (filed January 31, 2012). However, Ms. Chelle did not challenge the circuit court's finding that she had "made a myriad of unfounded accusations" against Mr. Ghazzaoui, and that there was "no credible evidence to support any of these allegations." *Id.*, slip op. at 6. Mr.

[6] Mr. Ghazzaoui, characterizing the conspiracy case for the benefit of the jury, stated in his opening remarks on January 29, 2013 in the instant case, "I am only suing the people who helped [Ms. Chelle] in turning our divorce into a barbaric war." On February 4, 2013, Ms. Harger testified that "[Mr. Ghazzaoui's] primary focus with [her] as well []as with [her] office was that he was going to continue to litigate this matter as long as it took so that [M.G.] would be in his care, even after [M.G.] was in his care, he was going to continue to litigate against Ms. Chelle until he felt that his case had been heard or until he felt that the results were justified."

Ghazzaoui cross-appealed, challenging, *inter alia*, the court's failure to "adequately compensate him," and failure to transfer the marital home to him. This Court affirmed the circuit court in an unreported opinion for consolidated cases captioned *Chelle v. Ghazzaoui*, No. 2052, Sept. Term 2010 and No. 80, Sept. Term 2011 (filed Jan. 31, 2012). Additionally, two other cases between Mr. Ghazzaoui and Ms. Chelle were appealed to this Court and subsequently dismissed. They are captioned *Ghazzaoui v.* Chelle, No. 1321, Sept Term 2013 and *Ghazzaoui v. Chelle*, No. 1114, Sept. Term 2012.

Just before the instant appeal, Mr. Ghazzaoui filed an additional appeal from an opinion and three orders entered by the Circuit Court for Anne Arundel County on July 30, 2013, as part of the ongoing custody dispute between him and Ms. Chelle. That appeal challenged, in part, the circuit court's denial of Mr. Ghazzaoui's motion to modify custody of M.G., based on his allegations that Ms. Chelle had "induced the child to take some of the child's own allowance money which was being held at Father's residence in order to pay for the replacement of eyeglasses the child had lost," and that Ms. Chelle was neglecting M.G.'s dental care. *Ghazzaoui v. Chelle*, No. 1322, Sept. Term 2013 (filed June 2, 2015). This Court affirmed the circuit court in an unreported decision. *Id.*, slip op. at 2.

The 60-Count Complaint

On July 26, 2011, Mr. Ghazzaoui filed a 60-count complaint against Ms. Chelle, initiating the case at hand and alleging, *inter alia*, that Ms. Chelle falsely accused him of domestic violence, fabricated the protective order violations, engaged in abuse of process when she accused him of child abuse and possession of child pornography, assaulted him

and filed false claims of assault against him. Mr. Ghazzaoui sought monetary damages for attorney's fees, pain and suffering, and loss of employment. At the same time, Mr. Ghazzaoui filed a complaint on behalf of M.G. against Ms. Chelle, alleging cruelty and neglect for the effect of Ms. Chelle's alleged actions on M.G.

On February 16, 2012, after a hearing before the circuit court, 39 of the 60 counts in Mr. Ghazzaoui's complaint against Ms. Chelle were dismissed. On October 15, 2012, M.G.'s case against Ms. Chelle and Mr. Ghazzaoui's case against Ms. Chelle were consolidated for trial purposes only.

On March 16, 2012, Ms. Chelle filed her answer and counterclaim, asserting a single claim of intentional infliction of emotional distress against Mr. Ghazzaoui.

The Stipulation

A telephonic hearing was held on January 28, 2013. At that time, the parties, Mr. Ghazzaoui *pro se*, agreed to stipulate to certain portions the circuit court's October 8, 2010 custody opinion in order to avoid re-litigating the parties' divorce. The stipulation, which was reduced to writing and entered into evidence, summarized the protective order violations and criminal charges against Mr. Ghazzaoui and stated, in pertinent part:

> . . . This document summarizes "stipulations" or agreements between the parties as to binding factual rulings by the trial judge in this prior court case between them; because the trial judge made these final rulings after a contested trial, these facts have been finally decided and may not be disputed by the parties in the case now presented to this jury. Thus, the jury should consider these following stipulations as undisputed facts.
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> * * *

In the divorce & custody case, the trial judge found these alleged violations of the protective orders and certain other charges were "unfounded accusations" made by [Ms. Chelle] against [Mr. Ghazzaoui]. Ms. Chelle's additional accusations against Mr. Ghazzaoui included allegations that he raped her in the presence of the child, that he engaged in pedophilia, abuse and other inappropriate conduct with and around the minor child; and that he had possession of child pornography. After 14 days of trial testimony and examining numerous exhibits on these allegations, the divorce, and other issues, the judge found, "no professional evaluation . . . and no credible evidence to support any of these allegations."

The trial judge found that Ms. Chelle "provided no excuse for her actions toward [Mr. Ghazzaoui], and the only excuse…[was] that this [was] an extreme response by someone who feels she is a victim."

Mr. Ghazzaoui admitted that he possessed a large collection of legal adult pornography; the trial judge found that, during the marriage, prior to July 2008, Ms. Chelle was aware of this and had participated on some occasions of viewing it. While it was ultimately determined that Mr. Ghazzaoui never exposed the minor child to this collection and that his possession of it was legal, the trial judge found that it was not unreasonable for Ms. Chelle and others to be concerned by it.

However, the trial judge also found that, on 7/1/08, Ms. Chelle took Mr. Ghazzaoui's computer to her attorney's office. She claimed that she and a computer expert discovered on the computer child pornography and on-line chats with and about minors of a sexual nature.

[Mr. Ghazzoui] denied having conducted any on-line chats with minors or referencing child pornography. He testified that he had a friend visiting his home in 1997, at the time the chats were conducted, who used his computer. The Court found [Mr. Ghazzoui's] testimony on this point credible. [7]

* * *

Despite all of the parents' conflicts, the trial judge found: "It is clear to the Court that the minor child has a positive and healthy relationship with each parent and clearly wants to be with both parents." The trial judge found

[7] This stipulation was taken verbatim from the bench opinion of the circuit court in the divorce action. However, in his testimony on January 30, 2013, Mr. Ghazzoui states that these chats occurred "over [a] weekend in 1996." The precise reason for the confusion as to the year is unclear from the record, but as a result the parties sometimes refer to different years regarding these events.

> each of the parents to be a "fit parent." In granting joint legal custody and shared physical custody of the child, the Court set conditions for such custody rights including family counseling for parents and child, as well as a schedule for each parent's times with the child.

(Some alteration in original) (emphasis in original) (footnotes omitted).

The stipulation also contained the court's determination that the child pornography was planted on Mr. Ghazzaoui's computer "during the period when only Ms. Chelle and those under her control had access to the computer," and that Ms. Chelle had "used these and other tactics to limit Mr. Ghazzaoui's access to [M.G.] . . . ." The parties agreed that, in exchange for the stipulation, Mr. Ghazzaoui could not bring up at trial the reasons for the divorce, but that he could attempt to prove the falsity of the allegations underlying the July 1, 2008 protective order.

The Trial

Trial commenced on Mr. Ghazzaoui's complaint on January 29, 2013, and continued for seven days. Over the course of the trial, numerous counts were dismissed. On January 30, 2013, upon motion by Ms. Chelle, the court dismissed counts 14, 27, 52, 53, 56, and 59,[8] of Mr. Ghazzaoui's complaint because these claims were "barred by res

[8] The counts dismissed were:

Count 14: Abuse and Misuse of Process based on Ms. Chelle's filing of an emergency motion on August 20, 2008, requesting Mr. Ghazzaoui's visitation be eliminated or supervised, based on finding child pornography and evidence of child solicitation on Mr. Ghazzaoui's computer.

Count 27: Abuse and Misuse of Process based on Ms. Chelle's accusations of child molestation made to the Howard County Policy Department on August 18, 2008, which resulted in an investigation by Child Protective Services that lasted until December 4, 2008.

Counts 53, 56, 59: Defamation, Abuse and Misuse of Process, and Intentional Infliction of Emotional Distress based on all of the allegations in the complaint, including

judicata." The court dismissed these claims because of an action filed on May 24, 2011 by Mr. Ghazzaoui, No. 02-C-11-161457, in the Circuit Court for Anne Arundel County, against Ms. Chelle, Joan Kinlan, Terri Harger, Barbara Taylor, Marvin Liss, Diane Altscher, and Michael Gombatz, alleging that these people conspired "to Have the Maryland Circuit Court for Anne Arundel County Unnecessarily Impose Supervision on the Plaintiff's Access to His Child." The circuit court noted that both Ms. Chelle and Mr. Ghazzaoui were parties in the prior civil conspiracy case and that the conspiracy case involved "identical charges" to some of those in the present case and "that it is the same evidence involved or could have been used." This dismissal disposed of all remaining claims involving child pornography or molestation.

On February 1, 2013, the court granted, with prejudice, Ms. Chelle's motion to dismiss M.G.'s case against her, and dismissed Count 15 of Mr. Ghazzaoui's complaint, alleging false arrest and imprisonment resulting from the protective order violations. On February 4, 2013, the court granted Ms. Chelle's motion to dismiss Count 37, alleging intentional infliction of emotional distress resulting from the December 1, 2008 protective order.

On January 29, 2013, before the dismissal of all of Mr. Ghazzaoui's claims regarding child pornography and molestation, the circuit court had read into evidence the

the allegations that Ms. Chelle falsely accused Mr. Ghazzaoui of possessing child pornography and child solicitation.

stipulation agreed upon by the parties concerning facts found in the 2008 divorce action, quoted at length *supra*.

Trial proceeded on the following 11 surviving counts.[9]

Count 16: Malicious Prosecution; Count 20: Intentional Infliction of Emotional Distress; and Count 21: Abuse and Misuse of Process.

Mr. Ghazzaoui alleged one count of malicious prosecution,[10] and one count each of intentional infliction of emotional distress and abuse and misuse of process. These counts are based on allegations set forth in paragraphs 110 through 118 of his complaint, which charge Ms. Chelle of falsely accusing Mr. Ghazzaoui of violating the July 1 protective order three times and bringing six charges against Mr. Ghazzaoui, all of which were eventually dropped.

Count 38: Abuse and Misuse of Process.

Mr. Ghazzaoui alleged that Ms. Chelle abused and misused process when she petitioned for a second protective order on December 1, 2008, after Ms. Chelle "refus[ed] to answer the telephone at her residence until well after 10:00 p.m." Mr. Ghazzaoui, "provoked by such outrageous behavior" left Ms. Chelle a voicemail and email "warning

[9] The surviving counts are grouped according to the discrete event to which they are tied in the complaint. The structure of Mr. Ghazzaoui's *pro se* complaint requires some deciphering, although the complaint follows the general structure whereby a particular event is described and then a number of counts—various torts—are tied to that event. Counts are tied in this way to the same underlying event.

[10] Mr. Ghazzaoui's complaint actually states that Ms. Chelle's actions "constitute six counts of **malicious prosecution**," but all six counts fall under the umbrella of Count Sixteen. (Emphasis in original).

her that he would someday give her the same treatment she has given him." Mr. Ghazzaoui alleged that the temporary protective order was dismissed and a final protective order was denied at a hearing held on January 5 and 6, 2009, because the court concluded "that there was no evidence to satisfy the statute for domestic violence."

Counts 39, 40, 41, and 42A: Assault.

The complaint alleges four separate counts of assault by Ms. Chelle against Mr. Ghazzaoui that occurred allegedly during the times Mr. Ghazzaoui and Ms. Chelle exchanged custody of M.G. These allegations (already discussed above), included: (1) that on February 9, 2009, Ms. Chelle attempted to run Mr. Ghazzaoui over with her car while he was attempting to secure M.G.in her car; (2) that on May 28, 2010, Ms. Chelle leaped into his car and "assailed" Mr. Ghazzaoui in attempt to extract M.G. from the car; (3) that Ms. Chelle assaulted Mr. Ghazzaoui again on May 13, 2011, in the presence of M.G. and one of M.G.'s friends; and (4) that on May 25, 2011, Ms. Chelle "attempted to hold [Mr. Ghazzaoui] hostage on the road demanding that he let her extract [M.G.] from his car in the middle of the road in front of [M.G.]'s school."

Count 42B: Malicious Prosecution and Count 46: Intentional Infliction of Emotional Distress.

Mr. Ghazzaoui asserted a count of malicious prosecution and intentional infliction of emotional distress against Ms. Chelle for allegedly filing a false charge of second-degree assault against him after their encounter on May 28, 2010, and obtaining another interim protective order. Mr. Ghazzaoui alleged that this "false assault charge" resulted in an arrest warrant issuing on August 9, 2010, which was eventually converted into a summons by the

circuit court. Furthermore, Mr. Ghazzaoui alleged that Ms. Chelle again falsely alleged that the Plaintiff had assaulted her on May 13, 2011, in their divorce case in response to Mr. Ghazzaoui's motion for contempt against Ms. Chelle.

Count 47: Abuse and Misuse of Process

Mr. Ghazzaoui claimed that Ms. Chelle committed abuse of process based on the alleged facts that (1) Ms. Chelle filed a false charge of assault against him on May 31, 2010, which resulted in a warrant for Mr. Ghazzaoui's arrest, and (2) Ms. Chelle filed a motion for contempt against Mr. Ghazzaoui alleging that he assaulted her on May 13, 2011.

Judgment for Mr. Ghazzaoui

The jury issued its verdict on February 7, 2013, finding in favor of Mr. Ghazzaoui on all counts except Count 41—alleged assault by Ms. Chelle on May 25, 2011—and awarding damages of $1,748,390.00 and the cost of the suit. The jury ruled against Ms. Chelle on her IIED counterclaim.

Within ten days of the verdict,[11] Ms. Chelle filed a motion for judgment notwithstanding the verdict, new trial, and remittitur. Mr. Ghazzaoui filed a motion for

[11] We note that Ms. Chelle's February 14, 2015 motion was filed a day before the judgment was indexed, but it was filed within ten days of the jury's February 7, 2015 verdict. Because Ms. Chelle's February 14, 2015 order was filed within ten days of the jury's verdict, her time to file a notice of appeal was tolled until the resolution of her February 14, 2015 motion. *See* Maryland Rules 2-535, 8-202; *Martino v. Arfaa*, 169 Md. App. 692, 702 (2006) ("because that motion was filed within ten days after entry of the judgment on the docket, Rule 8–202(c) provides that the time for Martino to file a notice of appeal was extended until 30 days after disposition of the motion." (citation omitted)) *Cf. Furda v. State*, 193 Md. App. 371, 377 n.1 (2010) ("Pursuant to Md. Rule 8–202(a), a notice of appeal must be filed within 30 days of the entry of the order or judgment from which the appeal is taken. However, a motion to exercise revisory power will not toll the

appropriate relief and a motion for oral examination in aid of judgment collection. A hearing was held on June 17, 2013. The circuit court issued an opinion and order on July 17, 2013 granting in part Ms. Chelle's motion for judgment notwithstanding the verdict and remittitur, and reducing the verdict to an amended judgment of $420,825.00. In its memorandum opinion granting the remittitur, the court apportioned damages according to event, as described in Mr. Ghazzaoui's claims, rather than apportioning damages according to each individual count. Ms. Chelle noted an appeal on August 8, 2013.

We include additional facts in the discussion relevant to the issues there examined.

DISCUSSION

I.

The Omission of a Limiting Instruction

Before this Court, Ms. Chelle argues that pursuant to Maryland Rule 5-105, a trial court shall give a limiting instruction, upon request, if admitted evidence is relevant to one purpose but not another purpose. She contends that, even in the absence of a party's request, a trial court has the discretion to give such an instruction. Ms. Chelle maintains that in this case, the trial court's failure to instruct the jury, after a request, to disregard evidence and argument concerning the claims that had been dismissed—such as Mr. Ghazzauoi's allegations that Ms. Chelle falsely accused him of possession of child pornography and child molestation or that Ms. Chelle was a cruel and neglectful mother—

time for filing an appeal unless the motion is filed within ten days of the judgment or order.").

was prejudicial error because the evidence had no relevance to the surviving counts. Ms. Chelle avers there is a virtual certainty that the circuit court's failure to provide a limiting instruction prejudicially affected the outcome of the case.

Mr. Ghazzaoui responds that all evidence that the circuit court admitted was relevant, that none of it was prejudicial, and that, ultimately, only Ms. Chelle's own actions prejudiced her. He argues that the jury had to decide whether Ms. Chelle had an ulterior motive in accusing Mr. Ghazzaoui of violence. He states that the jury was instructed only to answer the questions presented on the verdict sheet. He further maintains that Ms. Chelle has not demonstrated a link between admitted evidence and any prejudice.

A. Evidence Concerning Child Pornography and Molestation

Mr. Ghazzaoui filed a 60-count, 399-paragraph, 93-page complaint against Ms. Chelle on July 6, 2011. On January 29, 2013, before the dismissal of all of Mr. Ghazzaoui's claims regarding child pornography and molestation, the circuit court had read into evidence the stipulation agreed upon by the parties concerning facts found in the 2008 divorce action, quoted at length *supra*. The court described the stipulation as "final Rulings that were made and are binding on us in this court," and that it contained statements that Ms. Chelle leveled "unfounded accusations" . . . that Mr. Ghazzaoui "had engaged in pedophilia, abuse and other inappropriate conduct with or around [M.G.]. And also that he possessed child pornography." The next day, on January 30, 2013, the court made another statement that there was "a finding by the trial judge that Ms. Chelle was responsible for some false accusations . . . ."

Mr. Ghazzaoui also had testified at trial, on January 30, 2013, that Ms. Chelle had framed him for possession of child pornography:

> **Of course, as I believe I mentioned already, Carolina proceeded to frame me with false allegations of possession of child pornography.** And I believe we have a stipulation already that the divorce court has found that this child pornography was placed on my computer after the computer was removed from my control . . . .

(Emphasis supplied). There are repeated instances in the record of Mr. Ghazzaoui testifying about the child pornography.

Then, on January 31, 2013, all claims dealing with the alleged false accusations of child pornography and improper relationship with M.G. were dismissed. Although the evidence concerning alleged false accusations of child pornography and an improper relationship between Mr. Ghazzaoui and M.G. was no longer relevant to support the charges that were dismissed, the evidence was relevant at the time it was introduced and arguably remained relevant to at least one party's overall version of the events.

Ms. Chelle's counsel, at trial on January 31, 2013, asked for a limiting instruction concerning the child pornography and molestation evidence from the stipulation:

> [MS. CHELLE'S COUNSEL]: . . . I think in light of Your Honor's ruling we now need to instruct the jury that the stipulation is, in essence, withdrawn or moved or legally not before them because it related only to the counts Your Honor has just dismissed.
>
> THE COURT: Not true. The beginning of [the divorce court's] rulings said each of the peace order violations were based on things, which, you know, he had found to have no factual foundation. So, each of those violations of a peace order upon which he was arrested, that is referenced in the stipulation.

> [MS. CHELLE'S COUNSEL]: Then we certainly need to remove those elements such as the pornography and we certainly need to redraft it for ---, Your Honor.
>
> THE COURT: Well, let's think about that in due course. But I think we can get to that at the end of the case if and when the matter should go to the jury.

A few minutes later, Ms. Chelle asked again for a limiting instruction:

> [MS. CHELLE'S COUNSEL]: And then we will ask for an instruction to the jury explaining that some of the evidence that they have heard they can just disregard.
>
> THE COURT: Well, there will come a time when the Court is instructing the jury on the counts for them to consider. But right now I think it is only important for the Court to, in the interest of --
>
> [MS. CHELLE'S COUNSEL]: I just don't want --
>
> THE COURT: -- expediency not having any other extraneous evidence that doesn't relate to a live count.
>
> [MS. CHELLE'S COUNSEL]: I don't intend to cross-examine ones that have been dismissed but I don't want the jury to draw an inference from the fact that I am silent.
>
> THE COURT: I will tell them that the Court has made some rulings which will --
>
> [MS. CHELLE'S COUNSEL]: That is fine.
>
> THE COURT: -- focus and simplify some of those things that they have to consider and that we will give them more instructions on that later.
>
> [MS. CHELLE'S COUNSEL]: That is fine, thank you.

The court never provided the requested limiting instruction. The record also does not reflect that counsel for Ms. Chelle revisited the matter with the court again. Thus, the foregoing stipulation and testimony were allowed to stand without any limiting instruction

stating that the evidence was no longer relevant after the last of the child pornography and molestation claims were dismissed on January 31, 2013.

B. Evidence Concerning M.G.'s Complaint Against Ms. Chelle

As stated *supra*, Mr. Ghazzaoui also filed a separate complaint against Ms. Chelle alleging negligence and nuisance on behalf of their daughter. Before the dismissal of M.G.'s claims against Ms. Chelle, Mr. Ghazzaoui had testified, in support of these claims, that Ms. Chelle repeatedly accused him of being a thief in the presence of her daughter, that Ms. Chelle had told her daughter that he destroyed her passport, and that, as a result, M.G. had questioned him about why he had stolen Ms. Chelle's paintings. In addition, Mr. Ghazzaoui presented the testimony of Ms. Simona Volpi, a family friend. Ms. Volpi testified that Ms. Chelle was not consistent in dropping M.G. off at the appointed times for her visits with Mr. Ghazzaoui; that Ms. Chelle falsely said that M.G. was sick as an excuse for not honoring the visitation and custody schedule; and, that M.G. "wasn't a happy girl because she wanted to be with her dad."

On February 1, 2013, the circuit court granted Ms. Chelle's motion to dismiss M.G.'s claims against Ms. Chelle in their entirety. The circuit court found that, as a matter of collateral estoppel, there had not been a "complete abandonment of parental relationship, forfeiting parental authority and privileges," because this was an implicit factual finding in the 2008 divorce case because that court awarded joint custody to Ms. Chelle and Mr. Ghazzaoui. Because the circuit court could not have found a complete abandonment by Ms. Chelle and still awarded joint custody, this factual finding was implicit. Thus, Ms.

Chelle maintains that evidence supporting those claims became irrelevant once those claims were dismissed.

After the dismissal of these claims, Ms. Chelle's counsel asked for another limiting instruction:

> [MS. CHELLE'S COUNSEL]: **And may we have an instruction Monday morning to the jury about disregarding evidence?**
>
> THE COURT: **The Court will give that instruction in due course.** In the meantime to whatever additional evidence there is can go to the other counts which may remain and does not need to go to this count. But the Court will obviously instruct them in due course since it has been referenced to the other case.

(Emphasis supplied). Following the dismissal of M.G.'s claims, however, there was no limiting instruction stating that this evidence was no longer relevant.

C. The Omission of a Limiting Instruction

We review a court's grant or failure to give a limiting instruction for abuse of discretion. *See Carter v. State*, 366 Md. 574, 587-88 (2001) ("[W]hen the court finds that inadmissible evidence has been presented to the jury, it is within the discretion of the trial court to decide whether a cautionary or limiting instruction should be given.").

The Maryland Rules define what relevant evidence is and what it is not, and instruct courts what to do if irrelevant evidence is admitted at trial. Maryland Rule 5-401 provides that "'[r]elevant evidence' means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." Maryland Rule 5-402 takes up where Rule 5-401 left off, providing that, "[e]xcept as otherwise provided by constitutions,

statutes, or these rules, or by decisional law not inconsistent with these rules, all relevant evidence is admissible. Evidence that is not relevant is not admissible."

Maryland Rule 5-105, addresses situations in which evidence is relevant for one purpose, but not another, and provides that "[w]hen evidence is admitted that is admissible as to one party or for one purpose but not admissible as to another party or for another purpose, the court, upon request, shall restrict the evidence to its proper scope and instruct the jury accordingly." The committee note to the rule observes that Rule 5-105 "is silent on the timing of limiting instructions. Ordinarily, if requested, such instructions should be given when the evidence is received and repeated as part of the court's final instructions to the jury."

The failure to give a limiting instruction in a situation that calls for one may be reversible error when prejudice results. *McCracken v. State*, to which Ms. Chelle cites, is instructive on this point. 150 Md. App. 330, 333-35 (2003). There, the appellant was charged with carrying a concealed deadly weapon when he entered a bank with a gun. *Id.* at 333-34. The police officers who arrested the appellant were not allowed to testify to statements made during the appellant's arrest because the police had not advised the appellant of his *Miranda* rights before he told the police that the gun he was carrying was capable of being fired. *Id.* at 339. At trial, the appellant testified that the gun was not loaded when he was arrested because he had emptied the gun at the firing range. *Id.* at 338. The State then presented, for impeachment purposes, the police officer's testimony that the appellant had told the police, at the time of arrest, that the gun was loaded. *Id.* at 339-40.

The circuit court did not give a limiting instruction that the evidence could only be used for impeachment purposes and not as substantive evidence. *Id.* at 340. The *pro se* appellant did not request a limiting instruction during the trial. *Id.* at 341.

On appeal, this Court, reviewing for plain error, held that the failure of the circuit court to give a limiting instruction in this circumstance constituted reversible error[12]:

> A finding of reversible error is also supported by the nature of the inconsistency in the present case and the court's failure to give a limiting instruction. The impeachment centered on the issue of whether the gun was loaded when appellant entered the bank, a key fact relevant to proving the intent element of the crime with which appellant was charged. Although the nature of the inconsistency does not affect the requirements necessary for laying a proper foundation, it does lead us to conclude that appellant was prejudiced by the fact that no limiting instruction was given to explain to the jury that the impeachment testimony could only be considered for its impact on appellant's credibility as a witness and not as substantive evidence of guilt.
>
> * * *
>
> We hold that the court's failure to give a limiting instruction, even if that point is unpreserved, constitutes plain error under the circumstances of this case.

Id. at 345. Thus, *McCracken* stands for the proposition that a failure to give a limiting instruction when evidence is admissible for impeachment purposes, but not as substantive evidence, can constitute reversible error. *See id.*

McCracken is distinguishable from the case at bar. In *McCracken*, the offending testimony was admissible for one purpose—impeachment—but not another—as

[12] The Court also reversed because the State had not laid the proper foundation for the impeachment evidence. *McCracken*, 150 Md. App. at 344.

substantive evidence—*at the time it was introduced*. *Id.* at 340. In the present case, the evidence concerning child pornography and Mr. Ghazzaoui's relationship with M.G. was admissible as substantive evidence at the time the evidence was introduced. It was not until later in the trial, when Mr. Ghazzaoui's and M.G.'s claims were dismissed on January 31 and February 1, 2013, that the evidence was no longer relevant to the dismissed counts.

The other cases that Ms. Chelle cites in support of her argument either align with *McCracken* or are inapposite for other reasons. *See, e.g.*, *Guesfeird v. State*, 300 Md. 653, 666 (1984) (holding that the harm from an inadmissible statement was so great that it could not be cured by a curative instruction); *Quansah v. State*, 207 Md. App. 636, 644 (2012) (observing that a limiting instruction would have been appropriate to inform the jury that testimony could be used for impeachment, rather than truth, but finding no abuse of discretion in the court's failing to give an unrequested limiting instruction). Ms. Chelle has cited no case—and we have found none—in which the court was required to give a limiting instruction concerning evidence that was—at the time of its admission—properly admitted but later became immaterial to support counts that were dismissed. In this case, although the testimony and stipulations regarding Ms. Chelle's accusations against the father concerning child abuse and possession of child pornography were no longer relevant for the purpose of supporting charges that were dismissed on January 31 and February 1, 2014, those facts were also part of the larger story as stipulated to by the parties in their stipulation agreement presented at the onset of the trial. And, though the record is not clear why the court indicated on at least one occasion that it would give a limiting instruction

and then did not, we note only that the record shows the issue was not revisited by the court or by Ms. Chelle before the jury recessed. We conclude, therefore, that the court did not abuse its discretion in failing to provide the requested limiting instructions under these circumstances.[13]

[13] Ms. Chelle also argues that Mr. Ghazzaoui was allowed to admit the same irrelevant and prejudicial evidence after the claims concerning child pornography and an alleged improper relationship with M.G. were dismissed. To the extent that she argues that admission of evidence on these topics after the relating claims were dismissed requires reversal, these arguments are not preserved. Ms. Chelle's trial counsel did not object each time an objectionable question was asked, nor did she request a continuing objection to the objectionable lines of questioning. Although trial counsel occasionally objected to questions on the objectionable topics, the record is replete with instances of Mr. Ghazzaoui testifying or eliciting testimony on these disputed topics, without objection. For evidentiary objections to be preserved for appellate review, a litigant must request a continuing objection to an entire line of questioning or object to each offending question. *See Prince George's Cnty v. Longtin*, 190 Md. App. 97, 133 (2010) (citing *Pulte Home Corp. v. Parex, Inc.*, 174 Md. App. 681, 763-64 (2007) ("to preserve a challenge to the admission of evidence, ordinarily, a party must object each time the evidence is introduced."); *Fowlkes v. State*, 117 Md. App. 573, 588 (1997) ("In the case at hand, defense counsel objected sporadically. '[F]or appellant's 'objections to be timely made and thus preserved for our review, defense counsel would have had to object each time a question concerning [the objectionable issue] was posed or to request a continuing objection to the entire line of questioning. As he did neither, his objection is waived, and the issue is not preserved for our review.'" (alteration in *Fowlkes*) (some internal quotation marks omitted) (quoting *Snyder v. State*, 104 Md. App. 533, 557 (1995)).

In addition, there are also several instances of Ms. Chelle's trial counsel objecting to the offending lines of questioning on grounds other than relevance, and "[w]hen a party specifies particular grounds for an objection, it is deemed to have waived all other grounds not mentioned." *Pitt v. State*, 152 Md. App. 442, 463 (2003) (citation omitted). For these reasons, Ms. Chelle's arguments concerning the admission of irrelevant evidence after the dismissal of the claims are not preserved.

II.

The Exclusion of Ms. Chelle's Evidence

A. Ms. Chelle and Ms. Harger's "Pattern of Abuse" Testimony

During the pre-trial telephonic hearing, the court, Mr. Ghazzaoui, and Ms. Chelle's counsel discussed limiting the evidence presented at trial to that which was relevant to events that occurred *after* the parties' separation. The Court explained:

> Yes, I am going to deny the request to refer to the affairs, [Mr. Ghazzaoui], because again I think it is -- it is -- slipping into what I think would be a legal error to suggest to the jury that they should award damages to you because she had affairs during the marriage. I do not think Maryland Law supports that.
>
> *It would also be inviting her to explain, if she did have affairs, you know, what were the bad things you were doing during the marriage*. That in effect it would end up with us having a new trial on the divorce but with a jury up here instead of [the circuit court]. And you already finished the trial on the divorce.
>
> [The circuit court] already did what he thought was the appropriate thing in the divorce in terms of dealing with the finances, the costs, all of the issues that came from that divorce.
>
> So, I do not think it is proper for us to put the divorce itself and all the complaints you had against each other back in court again. . . .
>
> * * *
>
> Let me say, Mr. Ghazzaoui, I will put in, you know, that you had -- that the two of you had attempted to work things out, you tried to have an agreement that would, you know, allow the marriage to continue. That was not successful. You asked her to leave. She did this, you know, several days later. And then you are welcome to testify as to, you know, what you think her motivation was.
>
> But I do not think in order for you to do that and say that she was trying, you know, to get a strategical advantage, that you need to get into the fact that she had an affair or more than one affair or the fact that the two of you were fighting about money.
>
> So, so you will be permitted to do that. I will put back in what [the circuit court judge in the divorce case] said about, you know, you were trying

> to resolve the marriage. But again, *I am trying to prevent you from having a second divorce trial in front of the jury which could be misleading in a sense that they might say well, perhaps, we should punish this woman because of the affair or perhaps she should not award Mr. Ghazzaoui money because he was -- you know, cruel to his wife and controlling*.
>
> Those issues of why you got divorced or what the complaint would be against either of you before the divorce and separation, I do not think that has to do with your entitlement to claim damages against her at this time.

(Emphasis supplied). Neither party objected. It is clear that the circuit court believed that it was properly limiting testimony in this case to that which was relevant to the events that happened after the parties' separation, which were the only issues raised in the complaint. The court wished to avoid the jury re-litigating the parties' divorce by allowing evidence that related to events that occurred prior to the first protective order application, July 1, 2008.

Ms. Chelle argues on appeal that the trial court abused its discretion when it excluded her testimony and Ms. Harger's testimony pertaining to Mr. Ghazzaoui's treatment of Ms. Chelle before their separation. Ms. Chelle argues that, where "the court assumes the role of a party by ruling on the admissibility of evidence in the absence of appropriate objections, the court departs from the adversarial nature of our system." She points to the trial court's *sua sponte* instruction to the jury to disregard Ms. Chelle's testimony relating to Ghazzaoui's history of abuse, specifically the following colloquy that occurred during Ms. Chelle's direct examination by the defense:

> [MS. CHELLE'S COUNSEL]: What was the effect of all of the surveillance on you?
>
> [MS. CHELLE]: I felt like a rat in a cage waiting for [Mr. Ghazzaoui] to point his finger down and say okay you're dead or point it up and say you

survive. It was horrible. I didn't have the right to do anything. He was constantly confronting me, checking my handbag when I was coming home.

When he was coming back from his office he would open my handbag and check my check book and my wallet.

THE COURT: Okay. Let me stop you a minute because this is getting to be testimony about the marriage and the divorce.

MR. GHAZZAOUI: But I'm okay with it.

THE COURT: And instruct the jury that what they did during the marriage is not relevant to this case. And you can ask a different question.[14, 15]

---

[14] Counsel for Ms. Chelle did not state any concern or objection to the court's limiting instruction.

[15] We note that the court additionally interrupted and excluded Ms. Harger's testimony, of its own accord, relating to statements Ms. Chelle had made to her regarding the parties' relationship, as demonstrated in the following colloquy:

[MS. CHELLE'S COUNSEL]: Now I interrupted you, you had mentioned about his attitude and that he had taken property, what were the other factors that lead to your conclusions?

[MS. HARGER]: May I? During the course of interviewing Ms. Chelle, Ms. Chelle had a number of recordings that she wanted me to listen to that were telephone exchanges between the parties. One of the recordings was of Mr. Ghazzaoui. He indicated that any bad thing you do will be reciprocated. You asked for it and now you are going to get it.

I relied on Ms. Chelle's information that she shared with me as things to consider. She talked -- used the word that her husband always tried to legislate their marriage. She complained that he refused to accept no for an answer which resulted in her doing things such as quitting her job. She indicates that she often agreed with him and signed contracts in an effort to keep the peace and protect their daughter from witnessing a verbal abuse.

She indicates that he monitored her every move to include her work computer --

THE COURT: *Let me interrupt a minute and ask the parties to approach the bench*.

(whereupon, a bench conference follows.)

. . .

[MS. CHELLE'S COUNSEL]: Judge, she deviated from what I asked her and I will try and focus her.

MR. GHAZZAOUI*: I am having a blast here, I like it, I want to hear it*.

THE COURT: *I want to -- I am inclined to instruct them to disregard all of the stuff about conversations and negotiations during the marriage*.

[MS. CHELLE'S COUNSEL]: If I can try and confirm it and if I can ask questions to rehabilitate her --

THE COURT: Well, let me ask you just to move on until anything that may have happened after the separation. The point again is her opinion as to DV is not even admissible.

[MS. CHELLE'S COUNSEL]: I am trying to avoid that carefully, Your Honor.

THE COURT: So, it is only relevant -- the allegations between the parties if it happens basically after their separation.

[MS. CHELLE'S COUNSEL]: Understood.

THE COURT: Okay.

(Whereupon, the bench conference ends.)

THE COURT: Ladies and gentleman, just a moment, *the Court is going to instruct the jury to disregard testimony about things that happened prior to the parties['] separation. About how the marriage was going, if there were negotiations and you should do this and not that.* Again this jury's job is not to decide what should or should not have happened in the marriage or should or should not have happened in the divorce. Our issues that you are to consider are only relating to things that may have been done to each other basically after their separation. So we will ask you to restate your questions.

(Emphasis supplied).

Ms. Chelle asserts that the parties' "historical relationship" was highly probative of Mr. Ghazzaoui's causes of action. For example, to prove his malicious prosecution, abuse of process, and IIED claims, Ms. Chelle argues that Mr. Ghazzaoui was required to prove that her actions in reporting his protective-order violations and ongoing abuse were "extreme and outrageous," based on "malice or an ulterior motive," and, were without probable cause. Ms. Chelle contends that Mr. Ghazzaoui's treatment of her during their marriage was "critical to the jury's assessment of Ms. Chelle's actions and her defense that she acted based on a genuine fear of [Mr.] Ghazzaoui and reasonable probable cause."

Additionally, Ms. Chelle contends that the effect of the circuit court's exclusion of this evidence was exacerbated by its admission of "precisely the same type of evidence from Ghazzaoui." Specifically, Ms. Chelle points to the court allowing Mr. Ghazzaoui to elicit testimony from his character witness that he was a good father, had never behaved in a violent manner, and was "sad, hopeless, not taking care of himself, and not sleeping" during the divorce.

Mr. Ghazzaoui counters that Ms. Chelle actually *benefited* from the circuit court's decision to bar the parties from presenting evidence related to the events prior to July 1, 2008, because it prevented Mr. Ghazzaoui from presenting evidence related to Ms. Chelle's alleged infidelity and failure to comply with their "simple" post-nuptial agreement, which he contends led to their divorce. Furthermore, Mr. Ghazzaoui disputes that Ms. Chelle was actually barred from presenting evidence concerning the "pre-July 1st part of her story." Specifically, Mr. Ghazzaoui points to the following colloquies in the record:

[MR. GHAZZAOUI]: . . . In the July 1st, 2008 petition for a protective order, you essentially accused me of being violent. Is that correct?

[MS. CHELLE]: Yes.

[MR. GHAZZAOUI]: And protective orders are commonly known as -- these are domestic violence orders. Correct?

[MS. CHELLE]: Yes.

[MR. GHAZZAOUI]: Thank you. Was I violent towards you in the last two, three, four weeks that we lived together?

[MS. CHELLE]: You were violent to me in the last two months that we lived together.

[MR. GHAZZAOUI]: Okay. Was I violent towards you earlier than that?

[MS. CHELLE]: Yes, you were, during our relationship and our marriage, yes, you were.

[MR. GHAZZAOUI]: I was violent towards you during our entire relationship and marriage. Correct?

[MS. CHELLE]: Yes, many occasions.

* * *

[MR. GHAZZAOUI]: What did the effect of that surveillance have in terms of motivating you to file on July 1st as you filed?

[MS. CHELLE]: Well, I felt very scared that I didn't have any way to escape to all that. And my only way was runaway from the house. And that's what I did. I runaway with our daughter.

[MR. GHAZZAOUI]: Now –

[MS. CHELLE]: And ask for protection otherwise he will find me.

* * *

> [MR. GHAZZAOUI]: Do you recall saying ". . . he was waiting for me and surprised me with all of this. He threatened me. He was not kind and nice. He was violent and shouting all the time . . ."?
>
> [MS. CHELLE]: Yes.
>
> [MR. GHAZZAOUI]: Follow-up question by Ms. Rubin who was examining you in your deposition under oath. Ms. Rubin asked you "How was he violent?" and your answer was "He's a violent person". Do you recall that?
>
> [MS. CHELLE]: I don't recall exactly what I said. But you are.
>
> [MR. GHAZZAOUI]: Okay. Ms. Rubin reiterated her question "How was he violent?" and your answer was "Shouting, violent". Question by Ms. Rubin, "he shouted?", you answered "Yeah. Slamming doors. Saying things that were completely incoherent. He woke me up at midnight to tell me . . . you have to leave the house, you have two weeks…". Then, two pages later in the transcript "So what are the other reasons, other than the ones you have told me here?" Your answer "Threatening. Violence. Destroying my passport. Taking away [M.G.]'s passport. He did everything possible to just -- Can I say it in Spanish? -- to trap me."

(Ellipses without spaces in original, ellipses with spaces added). Mr. Ghazzaoui further disagrees that his character witness, Ms. Simona Volpi, offered improper testimony because she was "specifically instructed not to refer to the events prior to July 1st, 2008."

Ms. Chelle relies on *Kelly v. State* to support her argument that the trial court improperly excluded evidence, *sua sponte*, relating to the parties' relationship prior to their separation on July 8, 2008.[16] 392 Md. 511 (2006). In *Kelly*, the trial court decided, *sua*

[16] "While the 'clearly erroneous' standard of review is applicable to the trial judge's factual finding that an item of evidence does or does not have 'probative value,' the 'de novo' standard of review is applicable to the trial judge's conclusion of law that the evidence at issue is or is not of consequence to the determination of the action." *Ruffin Hotel*, 418 Md. 594, 619 (2011) (citations and quotations omitted). We review the trial

sponte, that the petitioner's witness would not be allowed to testify because, based on petitioner's counsel's proffer, the trial court determined that the witness could not provide admissible testimony. *Id.* at 526. The trial court required the petitioner to offer proffers for all of its witnesses before calling them to the stand, but the State did not receive similar treatment. *Id.* at 542. This resulted in the petitioner being unable to present any witnesses in his case. The Court of Appeals observed:

> When a party fails to object, the evidence normally will be admitted and, generally, that party will not be allowed to raise the issue on appeal. *Klauenberg v. State,* 355 Md. 528, 539, 735 A.2d 1061, 1067 (1999); *Brazerol v. Hudson,* 262 Md. 269, 275-76, 277 A.2d 585, 588-89 (1971); *Gwaltney v. Morris,* 237 Md. 173, 178, 205 A.2d 266, 268 (1964). As a result, it is incumbent upon the State to make the objections to the testimony as it is elicited by the defense. *When the trial court makes a ruling as to the admissibility of evidence on its own without a prior objection by any of the parties, the court leaves its role as an arbiter and assumes another role as a party to the proceeding, placing into question the defendant's right to a fair trial*. Especially where, as here, it requires a preexamination proffer as to all of the defendant's witnesses-but never required a preexamination proffer as to either of the State's witnesses. In this situation, the trial court was becoming an advocate for the State.

Id. at 541 (emphasis added). The Court determined that, where the trial court's conduct "denied petitioner his constitutional right to present a defense by not allowing the witnesses who were present to even be presented," the trial court had abused its discretion. *Id.* at 543. The Court granted the petitioner a new trial.

court's decision to exclude evidence related to events before July 8, 2008 under the *de novo* standard of review.

The circumstances in the case *sub judice* are substantially different, however, than those in *Kelly*. Here, Ms. Chelle was allowed to present all witnesses in her case. More importantly, we do not accept Ms. Chelle's characterization of the circuit court's actions to limit the testimony of Ms. Chelle's and Ms. Harger during trial as "*sua sponte*." The record is clear that the determination to limit the testimony during trial to events occurring post July 1, 2008, was made during a pre-trial telephonic hearing, and that no party objected to this ruling. It formed a basis of the stipulation between the parties. Indeed, Ms. Chelle did not object when the court excluded the testimony at issue. In fact, on the first day of trial, the defense actually requested that the court's ruling from the telephonic hearing be distilled into an order, in case the trial was postponed (as motioned by Mr. Ghazzaoui). Defense counsel stated:

> [MS. CHELLE'S COUNSEL]: . . . I would like yesterday's *in limine* ruling and trying an [sic] Order in case it is postponed. . . . . It was the Motion *in limine* made yesterday which the Court ruled in essence that the parties are not going to re-litigate the divorce. *That was the whole point of Your Honor's stipulation. The parties are not going to go back in time before June 14th, which is the date Mr. Ghazzaoui announced he wanted the divorce*.
>
> And in spite of Mr. Ghazzaoui's four or five requests to go back and try and show my client's character, personality, affairs, even while they were dating, hiding money, et cetera, those matters were not relevant and material. . . . Or unduly prejudicial as you phrased the ruling.

(Emphasis added). Evidently, not only did the defense not object to the court excluding testimony concerning the relationship of the parties prior to June 2008, but Ms. Chelle actually *requested* that the court enforce such an exclusion of evidence. Ms. Chelle may not, under these circumstances, argue for the first time on appeal that the exclusion of such evidence was detrimental to its defense. *See Turgut v. Levine*, 79 Md. App. 279 (1989)

(stating that, in order to preserve the issue for appeal, the proponent of evidence must make a contemporaneous objection when a trial judge rules *in limine* to exclude the evidence).

B. Ms. Harger's Lay Opinion Testimony

Ms. Chelle also argues that the testimony of Ms. Harger—the court appointed custody evaluator in the parties' custody case—was relevant and proper lay opinion testimony and that the trial court abused its discretion in excluding it from the jury's consideration. Because of Ms. Harger's close interactions with the parties in this case, Ms. Chelle argues that her testimony about "first-hand observations of the parties would have assisted the jury in determining whether Ms. Chelle's actions arose out of a genuine fear of Ghazzaoui."

Mr. Ghazzaoui concedes that "Ms. Harger's eye-witness testimony was both relevant and helpful," however, "her opinions of Ghazzaoui (in the form of inferences as to whether or not domestic violence took place away from her view) are completely conclusory, speculative, irrelevant and inadmissible." Because Ms. Harger first met the parties at the October 2008 *pendente lite* hearing, Mr. Ghazzaoui asserts that she may not testify about anything that she "believes, concludes, or feels" happened before that date.

The general rule in Maryland restricts lay witnesses from testifying "based upon specialized knowledge, skill, experience, training or education." *Ragland v. State*, 385 Md. 706, 725 (2005).[17] Argument concerning the proper or improper admission of expert

[17] Ms. Harger testified as a lay witness. Maryland Rule 5-701 governs the admissibility of lay opinion testimony:

testimony—or the limitation of testimony—must still be preserved. *See Whittington v. State*, 147 Md. App. 496, 536-38 (2002) (argument as to improper limitation of the scope of expert witness's testimony not preserved when complaining party failed to object to ruling and acquiesced to it); *Marshall v. State*, 85 Md. App. 320, 326-28 (1991) (stating that argument that trial court had erred in a motion *in limine* that allowed defendant's expert to be cross examined was not preserved when defendant did not allow expert to testify as a result of trial court's ruling on the motion *in limine*).

Here, Ms. Harger testified about the statements Mr. Ghazzaoui made to her during two lengthy interviews she conducted during the parties' custody dispute:

> [MS. HARGER]: My concerns for -- with regards to the conclusion of domestic violence was that Mr. Ghazzaoui -- the information that he sent me was very -- would be language that was very controlling. He spoke about his inability to tolerate dishonesty. He indicated that he would not second guess

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> If the witness is not testifying as an expert, the witness's testimony in the form of opinions or inferences is limited to those opinions or inferences which are (1) rationally based on the perception of the witness and (2) helpful to a clear understanding of the witness's testimony or the determination of a fact in issue.

In *Ragland*, the Court of Appeals adopted a narrow view of lay opinion testimony, as expressed in the amended Federal Rules of Evidence 701, which mirrors Maryland Rule 5-701 with the addition of (c), that the testimony not be "based on scientific, technical, or other specialized knowledge within the scope of Rule 702," the federal expert testimony rule. *Id.* at 722. The Court of Appeals explained:

> Expert opinion testimony is testimony that is based on specialized knowledge, skill, experience, training, or education. Expert opinions need not be confined to matters actually perceived by the witness. Lay opinion testimony is testimony that is rationally based on the perception of the witness.

Id. at 717.

the Judge in that case but he expected to hear the Judge report that his wife was a liar.

Mr. Ghazzaoui admitted to me that he placed a GPS device on his wife's car. He insisted that it was not to stalk her. He indicates that it was a "logging device used for corroboration." . . . .

He shared information which I have more in-depth later in the report but he had a marital contract that he had developed --

[MS. CHELLE'S COUNSEL]: Without going into the marital contract, please continue.

[MS. HARGER]: This document was observed to be very restrictive and degrading.

MR. GHAZZAOUI: Objection.

THE COURT: I will sustain the objection. The attorney requested that you not talk about the marital contract, but just go on to whatever the next point is, please.

* * *

[CROSS-EXAMINATION BY MR. GHAZZAOUI]

[MR. GHAZZAOUI]: Did I tell you that I was going to sue you?

[MS. HARGER]: You threatened, yes.

[MR. GHAZZAOUI]: Uh huh --

[MS. HARGER]: And you did.

[MR. GHAZZAOUI]: Okay was I true to my word, did I sue you? Yes or no?

[MS. HARGER]: Yes, for $903,000.

[MR. GHAZZAOUI]: Thank you. Was I true to my word, did I sue Carolina yes or not?

[MS. HARGER]: I believe that is why you are here.

[MR. GHAZZAOUI]: Which part of that is violence, ma'am?

[MS. HARGER]: Well, it is still textbook domestic violence. People use the legal system to continue to abuse and bully their spouses.

[MR. GHAZZAOUI]: So are you saying that Carolina's use or misuses of the legal system in 2008, was textbook domestic violence because she believed [sic] me through allegations of violation of protective order, allegations of molestation against [M.G.] none of which were true and so she believed [sic] me and she committed domestic violence against me, is that what you are saying?

THE COURT: Let me interrupt here again and ask that we move to a different area. The Court is going to instruct the jury that the questions that you have to determine, we are going to give you definitions and domestic violence as just used by the witness, that is not one of the definitions, that is not a part of it. So please move on to another issue.

MR. GHAZZAOUI: Is Your Honor saying that her definition of textbook domestic violence is --

THE COURT: That is not one of the legal definitions that this jury will have to employ.

MR. GHAZZAOUI: Thank you.

[MR. GHAZZAOUI]: Ma'am, one of the things that I heard you say here is that I told you I am incapable of tolerating dishonesty, is that correct?

[MS. HARGER]: Yes.

[MR. GHAZZAOUI]: Does that offend you that I am incapable of tolerating dishonesty?

[MS. HARGER]: It was a fact. Whether or not it offended me would not have mattered.

[MR. GHAZZAOUI]: And yet, did you think that is a factor that would make you believe I am a violent person?

[MS. CHELLE'S COUNSEL]: Objection.

THE COURT: Sustained. The witness has not been called to testify as to her beliefs of violence or non-violence and has actually not testified to that. So next question. . . .

[MR. GHAZZAOUI]: Ma'am, the things you heard me say, what part of the things that I told you in those six hour meetings and maybe the small meetings scattered throughout the two years, what part of those things that I told you would be relevant to the case before us today? What part of what you said today is relevant to the case that we have here before us today?

[MS. HARGER]: It is my belief that as a result of the information that I had that this case today is an indicator of your ongoing pathology. And that I do not believe that this litigation will end at any time in the near future and I believe that your daughter, [M.G.] is the stage for which you act out your pathology.

[MR. GHAZZAOUI]: Thank you. Ma'am to follow up to what you just said. Hypothetical if your husband --

[MS. CHELLE'S COUNSEL]: Objection.

THE COURT: You can approach the bench so that the Court can understand the hypothetical.

(Whereupon, the bench conference follows.)

MR. GHAZZAOUI: Hypothetical --

THE COURT: **One issue is she is not qualified as an expert to express her opinions here although the last question you just asked her was kind of asking her for an opinion but what would a hypothetical be even if she were an expert?**

MR. GHAZZAOUI: It was going to be if your own husband had falsely accused you of domestic violence three times and --

THE COURT: Okay, I will sustain the objection.

(Emphasis supplied). After the court sustained the objection to the hypothetical on the grounds that Ms. Harger was not an expert witness, Mr. Ghazzaoui moved to strike all of her testimony as irrelevant. The Court responded:

> THE COURT: The only thing that I am seeing that looks terribly relevant is that he said that he was not tolerating dishonesty and using a GPS to corroborate --
>
> [MS. CHELLE'S COUNSEL]: And shred her paintings if he didn't get his computer which as you know had all the pornography on it.
>
> THE COURT: Okay, so sir, I will permit you to -- I will grant that request except as to the things that you literally said to her that she was quoting you. And you can cross examine her on those.
>
> * * *
>
> THE COURT: Okay. So ladies and gentleman, I am going to instruct you basically the only purpose for which this witness is being called is ***not as an expert witness*** *today.* But just as to statements made by Mr. Ghazzaoui. *So, to the extent that she is expressing opinions, we will ask you to disregard that* but Mr. Ghazzaoui is going to have a few more questions about the statements that Ms. Harger has reported that he may have made to her. . . .

(Emphasis supplied). Questioning continued by Mr. Ghazzaoui without objection.

We note at the outset that Ms. Chelle's argument that the court improperly limited Ms. Harger's testimony was not preserved. As demonstrated above, counsel for Ms. Chelle raised no objection to the court's instruction to the jury concerning Ms. Harger's testimony. As stated in *Whittington* 147 Md. App. at 536-38 and *Marshall v. State*, 85 Md. App. at 326-28, rulings of this sort must be objected to, or they will not be preserved for appeal.

Even assuming, *arguendo*, the argument concerning the proper scope of Ms. Harger's testimony was preserved, the court's instruction was proper because Ms. Harger

was not qualified as an expert and could not properly give expert opinion testimony as to, for example, Mr. Ghazzaoui's "ongoing pathology." Ironically, the court's instruction was generated by Ms. Chelle's counsel's objection to Mr. Ghazzaoui's hypothetical question posed to Mr. Harger when that hypothetical ran the risk of straying into expert territory. The court's limitation, therefore, was intended to address the fact she was not an *expert*, not, as Ms. Chelle now contends on appeal, that she was not permitted to provide lay opinion testimony. To the extent the court limited her testimony to events occurring after the divorce, as we said, *supra*, this was a limitation on testimony that Ms. Chelle agreed to and actively requested that the court enforce during the trial. Therefore, the defense may not, on appeal, argue that this exclusion of evidence was detrimental to its defense. *See Van Royen v. Lacey*, 266 Md. 649, 652 (1972) (citation omitted) ("'A [person] shall not be allowed to blow hot and cold, to claim at one time and deny at another.'").

III.

Sufficiency of the Evidence and Abuse of Process Claims

Ms. Chelle argues that the trial court incorrectly denied her motion for judgment as a matter of law on Counts 38 and 47, which alleged abuse of process as related to the protective order that she petitioned for on December 1, 2008, and the assault charges she filed on May 31, 2010, and May 13, 2011.[18] Ms. Chelle asserts that the trial court

[18] The facts incorporated into Count 47 of Mr. Ghazzaoui's complaint actually allege (1) Ms. Chelle filed a false charge of assault against Mr. Ghazzaoui on May 31, 2010, (2) Ms. Chelle sought a protective order as a result of that alleged assault, (3) an arrest warrant issued as a result of the May 31 assault charge, and (4) on May 17, 2011, Ms. Chelle filed a motion for contempt in the parties' ongoing divorce case alleging that

incorrectly instructed the jury that the "initiation of legal process is sufficient to support an abuse-of-process claim[.]"[19] Ms. Chelle posits that the first element of an abuse of process

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Mr. Ghazzaoui assaulted her on May 13, 2011. However, on the verdict sheet provided to the jury, the only reference to Count 47 is as follows:

> AS TO ASSAULT CHARGES filed 5/31/10 (and Plaintiff's related arrest 8/9/10), as well as 5/13/11 assault charge:
>
> 4.1.A. Do you find that Defendant committed abuse of process (ct. 47) against Plaintiff?

The parties reviewed the verdict sheet prior to providing it to the jury and made suggestions and comments about missing claims. As to Count 47, Mr. Ghazzaoui pointed out that the court had originally omitted it from the verdict sheet, stating, "As to 5/31/10, I don't believe you have mentioned the abusive process count which is still alive." After some dispute and discussion as to whether Count 47 had been dismissed and concluding that it had not, the trial court stated that it would be added to the verdict sheet. Mr. Ghazzaoui did not mention any of the other allegations that were incorporated in his complaint under Count 47, nor does the verdict sheet reflect any of those allegations. Additionally, the parties do not raise on appeal any arguments about the allegations in the complaint, and instead focus on whether the alleged assault charges on May 31, 2010 and May 13, 2011, were abuses of process. Therefore, we will only address the sufficiency of the evidence and the propriety of the denial of the motion for judgment as a matter of law as to the claims as characterized by the parties on appeal and presented to the jury on the verdict sheet.

[19] In its instruction to the jury, the trial court further stated as to the abuse of process claim:

> So on to the last, the definition of our last claim which is abuse of process. I advise you that abuse of process is defined as when a person willfully uses either criminal or civil proceedings against another person for a purpose different from the proceeding's intended purpose and causing damages by arrest of the person or seizure of his property or causes other damage as defined by the Court's instructions.
>
> For example, if -- I'm going to give you what seems to be an off-the-wall example. If you and I, I and some other person are about to go and put a bid to get a job and it's going to be competitive bidding, if I arrange for the other guy who's bidding to be arrested that morning so he can't get there and he can't bid, then I have abused the process.

claim instead "concerns only the misuse of the tools the law affords litigants *once they are in a lawsuit*." (Emphasis supplied, internal citations omitted). The second and third elements, Ms. Chelle contends, are that (ii) the defendant acted with an ulterior motive, and (iii) an arrest or seizure of property resulted. Thus, Ms. Chelle argues, "mere initiation of a legal proceeding, even if with an 'ulterior motive' []cannot constitute abuse of process." (citing *Campbell v. Lake Hallowell Homeowners Ass'n*, 157 Md. App. 504, 530 (2004).

Ms. Chelle maintains that abuse of process claims are "heavily disfavored" because such claims discourage the resort to the courts. Ms. Chelle cautions that finding abuse of process for filing a protective order would create a chilling effect and have "disastrous consequences" for victims of domestic violence who may hesitate to seek protection for fear of a potential failure to ultimately prove abuse.

> Because I wasn't really doing it because I thought he needed to have a protective order against him or a criminal charge against him. I was doing it because I wanted to stop him from going there and getting the job that I'm bidding on. That would be an example.

Although it is clear that this explanation of the tort of abuse of process is incomplete and improperly indicates that the mere filing of process with malicious intent would be sufficient, Ms. Chelle did not object at trial to this instruction. Therefore, on appeal, we will only address whether the circuit court properly denied Ms. Chelle's motion for judgment as a matter of law and submitted Counts 38 and 47 to the jury. *See* Maryland Rule 2-520(e) ("No party may assign as error the giving or the failure to give an instruction unless the party objects on the record promptly after the court instructs the jury, stating distinctly the matter to which the party objects and the grounds of the objection.").

Mr. Ghazzaoui argues that Ms. Chelle incorrectly presents the elements of an abuse of process claim. Mr. Ghazzaoui contends that the correct first element of an abuse of process claim is "the use or misuse of a legal proceeding or process solely for an improper ulterior purpose." He disagrees with Ms. Chelle's assertion that one can only abuse process that is already underway. Furthermore, Mr. Ghazzaoui argues that the last element does not require a showing of arrest or loss of property, but is merely a showing that the abuse of process caused damages.

Although Mr. Ghazzaoui agrees that the trial court's instruction to the jury was "not . . . a good analogy," he maintains that Ms. Chelle's interpretation of the law is flawed. He points out that the divorce action was ongoing during this time and Ms. Chelle's actions in filing for a protective order and assault charges "misused the legal process in a desperate bid to gain an advantage at the divorce/custody trial."

We review *de novo* the trial court's denial of a motion for judgment as a matter of law. *Ayala v. Lee*, 215 Md. App. 457, 467 (2013). In *Ayala*, this Court explained:

> [t]he evidence and reasonable inferences drawn therefrom are viewed in the light most favorable to the non-moving party. *Id.* at 407 (Citation omitted). If there was "any evidence, no matter how slight, that was legally sufficient to generate a jury question," the motion was properly denied. *Address v. Millstone,* 208 Md. App. 62, 80 (2012) (Quotation omitted). But, "where the evidence is not such as to generate a jury question, i.e., permits but one conclusion, the question is one of law and the motion must be granted." *Id.* (Quotation omitted); *see also Brown v. Bendix Radio Div. of Bendix Aviation Corp.,* 187 Md. 613, 619 (1947) ("[I]t is only where the minds of reasonable men cannot differ that the court is justified in deciding the question [of negligence] as a matter of law.").

Id.

"The tort of abuse of process 'is concerned with the improper use of civil or criminal process in a manner not contemplated by law *after is has been issued* . . . .'" *Campbell,* 157 Md. App. at 530 (emphasis supplied) (quoting *One Thousand Fleet Ltd. P'ship v. Guerriero*, 346 Md. 29, 39 (1997) (internal quotation marks omitted)). Maryland Rule 1-202(w) defines process as "any written order issued by a court to secure compliance with its commands or to require action by any person and includes a summons, subpoena, an order of publication, a commission or other writ." The Court of Appeals has stated in *One Thousand Fleet Ltd. P'ship*, that to support an abuse of process claim, one must prove

> first, that the defendant willfully used process *after it has issued* in a manner not contemplated by law . . . ; second, that the defendant acted to satisfy an ulterior motive; and third, that damages resulted from the defendant's perverted use of process . . . .

346 Md. at 38 (emphasis supplied). Distinguishing the cause of action from a claim for malicious use of process, the Court further expounded:

> In his treatise, Professor Keeton notes that an action for malicious use of process does not provide a remedy for those cases "in which legal procedure has been set in motion in proper form, with probable cause, and even with ultimate success, *but nevertheless has been perverted to accomplish an ulterior purpose for which it was not designed.* In such cases a tort action has been developed for what is called abuse of process." W. Keeton, Prosser & Keeton on the Law of Torts § 121, at 897 (5th ed.1984).

Id. (emphasis supplied). This Court has also clarified that "[t]he mere issuance of the process itself . . . is not actionable, even if it is done with an ulterior motive or bad intention." *Campbell*, 157 Md. App. at 530 (internal quotations and citations omitted). Therefore, Ms. Chelle's understanding of the first element of an abuse of process claim, that the process be abused *after* it has been issued, is correct.

The second element of abuse of process is not in dispute.

Regarding the third element of abuse of process, in *Krashes v. White*, the Court of Appeals, considering a certified question from the United States District Court for the District of Maryland, clarified that in an action for abuse of *criminal process*, a party need not have been arrested or have had an arrest warrant be issued against him. 275 Md. 549, 556 (1975). Rather, it is sufficient that the court issued "some sort of criminal process against a party." *Id.* However, in *One Thousand Fleet Ltd. Partnership*, the Court of Appeals confirmed that its holding in *Krashes* was limited to abuse of criminal process, and that "[a] cause of action for *civil* abuse of process in Maryland requires that the plaintiff establish that *an arrest of the person or a seizure of property of the plaintiff resulted from the abuse of process*." 346 Md. at 45, 47-48 (emphasis supplied) (citations omitted).

A. The December 2008 Protective Order

In *Campbell*, this Court was confronted with the question of whether an abuse of process claim was properly pleaded where the process allegedly abused was a protective order and the complainant asserted only that he was "damaged." 157 Md. App. at 516-18. *Campbell* concerned a homeowner and a homeowners' association whose quarrel began over the location the homeowner was parking his vehicle, and resulted in four separate legal actions. *Id.* at 510. While two of the actions concerning attorney's fees and a permanent injunction were pending, the president of the association filed a petition for, and was granted, a temporary protective order prohibiting the homeowner from having any contact with the president and his family. *Id.* at 515-16. This protective order was granted

based on the president's allegations that the homeowner was "stalking and harassing him and his family." *Id.* at 515. The homeowner appealed the protective order, and the Circuit Court for Montgomery County vacated the order after finding that there was no evidence to support the allegations of stalking or harassment. *Id.* at 516.

The homeowner then filed a complaint against the association and the president, claiming, among other things, that the president committed an abuse of process by filing for the protective order, which "damaged" the homeowner. *Id.* at 516-17. The circuit court granted the president and association's motion for summary judgment, finding that the appellant had not properly pleaded a claim for abuse of process. On appeal, this Court agreed, stating that the "[m]ere initiation of [a protective order] proceeding[ ] . . . does not constitute the tort of abuse of process." *Id.* at 531. Furthermore, this Court pointed out that "[the homeowner] also failed to allege he had been arrested or that his property has been seized." *Id.* at 531.

In the present case, Count 38 alleged that Ms. Chelle committed an abuse of process by petitioning for the December 1, 2008 protective order. As discussed, *supra*, Ms. Chelle petitioned for the December 1, 2008 protective order in response to Mr. Ghazzaoui calling her on the telephone many times on the evening of November 30, 2008. Mr. Ghazzaoui's complaint does not allege that he was arrested as a result of the petitioning for this

protective order;[20] instead, it states that the Circuit Court for Anne Arundel County denied issuing a final protective order on January 6, 2009.

A protective order is a civil action, with the primary goal of preventing future abuse, not punishing past abusive actions. *Coburn v. Coburn*, 342 Md. 224, 252 (1996). Under Count 38, in order for the circuit court to have properly denied Ms. Chelle's motion for judgment as a matter of law, there must have been *some* evidence in the record that (1) Ms. Chelle misused the civil process for a protective order *after it had issued*, (2) Ms. Chelle acted with an ulterior motive, and (3) Mr. Ghazzaoui suffered arrest or seizure of property as a result of the misuse of process. *Ayala*, 215 Md. App. at 467; *One Thousand Fleet Ltd. P'ship*, 346 Md. at 38, 45.

As a matter of law, the evidence could not support a claim for abuse of process with regard to Count 38. Mr. Ghazzaoui failed to allege or provide any evidence under Count 38 that Ms. Chelle did anything beyond filing a petition for a protective order on December 1, 2008. As this Court made clear in *Campbell*, the mere act of filing for a protective order is not sufficient to support a claim for abuse of process. 157 Md. App. at 531. So long as the evidence shows that Ms. Chelle intended to use the protective order for the immediate purpose for which it was intended, she is not liable for abuse of process, notwithstanding "bad intentions" or a vicious or vindictive motive. *Id.* Furthermore, Mr. Ghazzaoui did not allege or provide any evidence that he was arrested or that his property was seized as a

[20] As previously discussed, Mr. Ghazzaoui was arrested or placed in police custody several times in August and October 2008 for the violation of an *earlier* July 1, 2008 protective order.

result of the protective order. Therefore, the circuit court improperly denied Ms. Chelle's motion for judgment as a matter of law as to Count 38.

B. Assault Charges

In Count 47, Mr. Ghazzaoui alleged that Ms. Chelle committed an abuse of process when she filed assault charges against him on May 31, 2010, and May 13, 2011. With regard to the May 31 incident, Ms. Chelle asserts that Mr. Ghazzaoui did not provide evidence that Ms. Chelle did anything but report an assault, and, furthermore, Mr. Ghazzaoui admitted he was not arrested as a result of that incident. With regard to the May 13 incident, Ms. Chelle points out that Mr. Ghazzaoui admitted in testimony that *he* called the police and that neither party pressed charges as a result of the incident. Mr. Ghazzaoui contends that Ms. Chelle filed the May 31, 2010 assault charge in a "desparate bid to gain an advantage at the [ongoing] divorce/ custody trial."

In *Palmer Ford, Inc. v. Wood*, the Court of Appeals explored whether the circuit court properly denied the defendant's motion for directed verdict as to the abuse of process claim levied against it. 298 Md. 484, 485 (1984). The defendant, Palmer Ford, Inc., was an automobile repair company which had performed repairs on plaintiff Mr. Wood's vehicle. *Id.* at 487. Palmer Ford, unable to collect the debt for the repairs from Mr. Wood, notified the police who arrested Mr. Wood on April 27, 1977 at 1:00 p.m. *Id.* at 489-90. Representatives of Palmer Ford also met with Mr. Wood's mother on "about April 27," possibly *after* Mr. Wood was arrested, and demanded payment, threatening that Mr. Wood

would go to jail otherwise. *Id.* at 489, 514. Mr. Wood's mother soon after furnished payment to Palmer Ford. *Id.* at 490.

The criminal proceeding against Mr. Wood was later dropped, although the Court noted that the record was not clear as to exactly how the case was resolved. *Id.* at 490-92. Thereafter, Mr. Wood sued Palmer Ford for damages, alleging claims of malicious prosecution and abuse of process. *Id.* at 492. The jury found Palmer Ford liable for both claims and the trial court denied Palmer Ford's motion for a directed verdict. *Id.* at 493. The Court of Appeals affirmed the trial court as to the abuse of process claim, determining that there was evidence in the record that Palmer Ford may have used the criminal proceeding *after its issuance* "to effect collection of the amount claimed from [the appellee] for repairs to his car," because it was not clear exactly when the representatives of Palmer Ford threatened appellee's mother, and there was evidence in the record that it could have occurred after Mr. Wood was arrested. *Id.* at 511, 514. Therefore it was proper to submit the abuse of process claim to the jury. *Id.*

In discussing the abuse of criminal process, the Court stated:

> "If the process is employed from a bad or ulterior motive, the gist of the wrong is to be found in the uses to which the party procuring the process attempts to put it. If he is content to use the particular machinery of the law for the immediate purpose for which it was intended, he is not ordinarily liable, notwithstanding a vicious or vindictive motive. But the moment he attempts to attain some collateral objective, outside the scope of the operation of the process employed, a tort has been consummated. The most common instance of the operation of this principle is an attempt to extort money from the person subjected to the process . . . . So also, a person using the processes

> of the criminal law to enforce payment of a debt is abusing legal process and is liable in damages." [Footnotes omitted.]

Id. at 512-13 (quoting 1 Harper & James, *Law of Torts* 319 at 331 (1956)).

A year later in *Keys v. Chrysler Credit Corp.*, the Court of Appeals revisited the question of whether process was abused where the appellee corporation obtained a writ of garnishment for the appellant's wages to recover a judgment that the appellant had already paid in full. 303 Md. 397, 411 (1985). Distinguishing *Palmer Ford*, the Court determined that "in the instant case . . . there is no evidence of any improper use or perversion of the process *after it was issued*." *Id.* at 412 (emphasis supplied). The corporation, after being notified that the debt had already been paid, acknowledged its error and acted to effect a reimbursement of the attached wages. *Id.* at 402. The Court stated:

> "If the order was procured maliciously, falsely and without probable cause, that circumstance would furnish no ground for holding that the regular and proper service of the order amounted to a malicious abuse of the process of the court. The manner of obtaining the order is quite a different thing from the manner of executing it, when obtained. Or in the language of Bosanquet, J., in *Grainger v. Hill*, [4 Bing. N.C. 212], '*the action is not for maliciously putting process in force; but for maliciously abusing the process of the court*.'"

Id. at 412 (emphasis supplied) (quoting *Bartlett v. Christhilf*, 69 Md. 219, 230-31 (1888)).

In the present case, Mr. Ghazzaoui did not allege nor provide any evidence that Ms. Chelle abused the process of the court *after* she filed the assault charge on May 31, 2010. There is no evidence that Ms. Chelle used the one charge that she actually filed to her advantage in the divorce or custody proceedings. Moreover, each party filed one abuse charge against the other, and, Mr. Ghazzaoui admitted that "neither [party] pressed charges

against [the other]" after the incident on May 13, 2011. Mr. Ghazzaoui, therefore, was not arrested as a result of either charge. In conclusion, we discern no evidence in the record that could support a finding that the first or third elements of the abuse of process claim existed. Therefore, we hold the circuit court erred in denying Ms. Chelle's motion for judgment as a matter of law as to Count 47.

IV.

The Intentional Infliction of Emotional Distress Claims

Finally, Ms. Chelle argues that the circuit court erred as a matter of law in submitting Mr. Ghazzaoui's surviving IIED claims to the jury. She contends Counts 20 and 46—the alleged false allegations she made against Mr. Ghazzaoui of violating a protective order and the alleged false allegations of assault—simply do not rise to the level of "extreme and outrageous conduct" necessary to support an IIED claim under Maryland law. Mr. Ghazzaoui responds, without citing any law, that these false allegations are serious criminal charges that can result in incarceration, a criminal record, and adverse employment effects.[21]

As stated *supra*, we review *de novo* the denial of a motion for judgment and apply the same standard as the circuit court, reviewing "the evidence and reasonable inferences drawn therefrom . . . in the light most favorable to the non-moving party." *Ayala*, 215 Md.

[21] Mr. Ghazzaoui also states that the circuit court gave no explanation as to why it dismissed Count 26, another IIED claim. He further notes that the circuit court improperly reduced the verdict for Counts 20 and 46. The purpose of these contentions is not apparent to us because these contentions do not relate to whether Counts 20 and 46 were sufficient as a matter of law to be submitted to the jury as IIED claims.

App. at 467 (citations omitted). "**It is for the court to determine, in the first instance, whether the defendant's conduct may reasonably be regarded as extreme and outrageous**; where reasonable men may differ, it is for the jury to determine whether, in the particular case, the conduct has been sufficiently extreme and outrageous to result in liability." *Harris v. Jones*, 281 Md. 560, 569 (1977) (emphasis supplied). The Court of Appeals has overturned IIED jury verdicts when it had concluded that the issues should never have been presented to the jury in the first place. *See Batson v. Shiflett*, 325 Md. 684, 691-92, 733-36 (overturning jury verdict and reversing judgment on IIED claim when conduct alleged not "extreme and outrageous" enough to support claim); *Harris*, 281 Md. at 563-64, 570, 572-73 (affirming Court of Special Appeals' reversal of IIED jury verdict on the grounds that there was legally insufficient evidence that distress was "severe" enough to sustain action).

The tort of intentional infliction of emotional distress has four elements: "(1) the conduct must be intentional or reckless; (2) the conduct must be extreme and outrageous; (3) there must be a causal connection between the wrongful conduct and the emotional distress; and (4) the emotional distress must be severe." *Hrehorovich v. Harbor Hosp. Center, Inc.*, 93 Md. App. 772, 799 (1992) (citing *Harris v. Jones*, 281 Md. 560, 566 (1977)). Recovery for this tort is limited "to the most extreme and unusual circumstances." *Id.* at 799. In *Kentucky Fried Chicken Nat'l Mgmt. Co. v. Weathersby*, the Court of Appeals restated the general principle

> "that there is liability for conduct exceeding all bounds usually tolerated by decent society, of a nature which is especially calculated to cause, and does

> cause, mental distress of a very serious kind. The requirements of the rule are rigorous, and difficult to satisfy."

326 Md. 663, 670 (1992) (quoting W. Page Keeton, *Prosser and Keeton on the Law of Torts* § 12, p. 60-61 (5th ed. 1984)).

Recently, this Court noted the scant few instances in which the Court of Appeals has recognized viable IIED claims:

> In the 30 years since the Court of Appeals recognized the tort of IIED, it has upheld such claims only four times. *See Faya v. Almaraz*, 329 Md. 435, 620 A.2d 327 (1993) (reversing dismissal when HIV-positive surgeon operated on the appellants without their knowledge of his disease); *Figueiredo-Torres v. Nickel*, 321 Md. 642, 584 A.2d 69 (1991) (reversing dismissal when plaintiff alleged psychologist engaged in sexual relations with plaintiff's wife during the time he was counseling the couple); *B.N. v. K.K.*, 312 Md. 135, 538 A.2d 1175 (1988) (cause of action for IIED could exist when physician had sex with nurse without informing her he had herpes and infected her with the disease); *Young v. Hartford Accident & Indem. Co.*, 303 Md. 182, 492 A.2d 1270 (1985) (reversing dismissal when workers' compensation insurer insisted that claimant submit to psychiatric evaluation for the "sole purpose" of harassing her and forcing her to drop her claim or commit suicide). The Court of Appeals has emphasized that "the tort is to be used sparingly and only for opprobrious behavior that includes truly outrageous conduct." *Kentucky Fried Chicken Nat'l Mgmt. v. Weathersby*, 326 Md. 663, 670, 607 A.2d 8 (1992) (citing *Batson*, *supra*, 325 Md. at 734-35, 602 A.2d 1191).

Lasater v. Guttman, 194 Md. App. 431, 449-50 (2010). Thus, it is apparent that Maryland courts have been reluctant to recognize conduct as "extreme and outrageous" enough to satisfy the standard for this tort.

"Extreme and outrageous conduct is behavior that goes 'beyond all possible bounds of decency,' or is behavior that is 'atrocious' or 'utterly intolerable in a civilized community.'" *Hrehorovich*, 93 Md. App. at 800 (citing *Harris*, 281 Md. at 567). In *Hines v. French*, the appellant alleged that a police officer, after he had pulled her over, noticed

and commented on the fact that she had fresh surgery scars, slammed her body and head into the side of a truck, and laughed at the pain he must have caused her still healing face. 157 Md. App. 536, 546 (2004). According to the appellant, after this, the police officer then '"pulled her crippled left arm up behind her back and handcuffed her hands so tightly" that appellant suffered lacerations on her wrists and hands. It was not until after the handcuffs were secured that Deputy French told appellant that she was a suspect in a hit-and-run accident." *Id.* This Court stated that the alleged conduct was, if true, "inappropriate." *Id.* at 559. Nonetheless, the behavior was "not tantamount to 'atrocious[ ] and utterly intolerable' behavior that goes 'beyond all possible bounds of decency,'" and thus was not extreme or outrageous enough to give rise to a viable IIED claim. *Id.*

In *Lasater*, the appellee, the former husband of the appellant, was spending sums significantly exceeding the couple's monthly income, took out several loans, and ran up an overdraft balance of over $10,000.00 on a joint checking account. 194 Md. App. at 438. The appellant-wife was struggling to keep the family's situation afloat while the appellee told her that their dire financial straits were because she stopped working to look after their children. *Id.* The appellee also lied to her about his employment situation, saying that he had lost his partnership status and gone "of-counsel" at his law firm. *Id.* This Court described her allegations in the following manner:

> Lasater makes the following relevant allegations in her amended complaint and in her affidavit: Guttmann actively deceived her for many years with regard to his income, his expenditures, and his extramarital activities; Guttmann, on one occasion, lost his temper, yelled that he did not like her "tone of voice," and she did not "trust him"; Guttmann took advantage of his knowledge of abuse Lasater suffered as a child and her

> experience growing up with very little money; Guttmann "deliberately, consciously, and maliciously made [Lasater] feel solely responsible for the family's financial plight"; and Guttmann "never expressed any remorse" or "'came clean'" about his role. As a result of this conduct, Lasater "experienced a slow, steady and debilitating decline in her physical health due to gratuitous and unnecessary stress," including gastrointestinal problems, pneumonia, vestibular neuronitus, and premature menopause.
>
> In addition, Guttmann subjected Lasater to public humiliation. The example she gives is that the chaplain at her daughter's private school asked the congregation to "pray 'for John and Nancy' " as a result of their financial troubles.
>
> In her affidavit, Lasater describes several other instances when Guttmann blamed her for their financial problems, troubles, yelled at her, humiliated her, or otherwise caused her stress. She described a "particularly heinous" incident that happened in January of 2003, after she discovered Guttmann's credit card debt and questioned him about it. She was sobbing and asking him why he had not told her about the debt. He responded, "I didn't want you to know what you were doing to our family."
>
> In another instance, she avers that in 1996 she questioned Guttmann about why she needed to work outside the home and he became enraged, leapt from the couch where they were sitting, and yelled that "he was working 'to buy the butt wipes!'" for their daughter. Another time, in 2004, Guttmann yelled at her "so loudly and so aggressively" that she curled up into a fetal position.

Id. at 448-49.

In holding that the circuit court did not err in granting summary judgment for the appellee, we stated that this behavior was not extreme or outrageous enough to support a claim for IIED. *Id.* at 450. We concluded that "[t]his behavior is not "'so extreme in degree [] as to go beyond all possible bounds of decency[.]'" *Id.* (quoting *Harris*, 281 Md. at 567. We observed that the behavior "pales in comparison to the behavior alleged in the few cases held to have met the high threshold for extreme or outrageous conduct." *Id.*

In the case *sub judice*, two IIED claims—Counts 20 and 46—survived and went to the jury. Count 20 alleged that Ms. Chelle falsely accused Mr. Ghazzaoui three times of

violating a protective order, and that he was unjustly arrested and detained three times as a result of this. The complaint then alleged that, after the charges in Montgomery County were dropped, Ms. Chelle pressed one of the same charges against him in Anne Arundel County, causing a new warrant to be issued for his arrest and a second unnecessary detention, this one for eight hours on August 26, 2008. Finally, Count 20 alleged that Ms. Chelle alleged, in Howard County, a violation of the protective order, so that Mr. Ghazzaoui was detained on October 22, 2008, for two hours.

To support Count 20, Mr. Ghazzaoui testified at trial that, on July 14, 2008, Mr. Ghazzaoui testified that he received a telephone call from a Montgomery County police officer informing him that there was a warrant for his arrest for three violations of the protective order, for stalking, attempting to make contact with Ms. Chelle through her friends, and for reentering the martial home and "that none of that was true." He testified that he turned himself in at the police station in Montgomery County, he was shackled and forced to wear a jumpsuit that gave him a fungal infection, and finally, after two nights in jail, a judge granted him $50,000.00 bail and he was bailed out on July 17, 2008. As a condition of his bail, Mr. Ghazzaoui was outfitted with an ankle GPS tracker, and Mr. Ghazzauoi testified that his tracker caused him physical pain. Mr. Ghazzaoui testified that, on August 14, 2008, he became aware of a fourth charge for violation of the protective order, this one based on sending Carolina a "long e-mail," although he testified that he sent this email before he was served with the protective order, when it was acceptable for him to do so.

On direct examination by Mr. Ghazzaoui, Ms. Chelle testified that, on July 14, 2008, she filed two counts of violating the protective order against Mr. Ghazzaoui when he came to the family residence, putatively by court order, to pick up his clothes and for emailing her friends.

Mr. Ghazzaoui then testified that, on August 18, 2008, he was charged, in Anne Arundel County, with the same reentry into the house that supported one of the Montgomery County charges and that he turned himself in again and that he was released on his own recognizance shortly "7 ½ [or] 8 hours" later. The charge was eventually dropped in 2010.

Mr. Ghazzaoui also testified concerning the alleged Howard County violation. He testified that he traveled to Howard County Child Protective Services ("CPS") to discuss an investigation of M.G. with a CPS employee named Ayanna Lewis, that he "saw [Ms. Chelle's car parked outside]," that a lady told him that Ayanna Lewis was not available and slammed the door in his face. Mr. Ghazzaoui testified that this incident at Howard County CPS, in which he was in the same building as Ms. Chelle, resulted in a new charge of violation of the protective order, even though he was in the building for a different reason. He testified that he learned there was a new warrant for his arrest, stemming from a Howard County police officer being called to the premises in response to this incident, on October 22, 2008. He turned himself in at the Howard County jail and was released nearly three hours later. Mr. Ghazzaoui further testified that the final protective order was dismissed by the consent of the parties on October 23, 2008.

Count 46 alleged that Ms. Chelle attacked Mr. Ghazzaoui, on May 28, 2010, during a scheduled pickup of M.G. To support this count, Mr. Ghazzaoui testified that, on May 28, 2010, he went to pick up M.G. from Ms. Chelle's residence for a scheduled weekend visitation. He testified that, while he was fastening M.G.'s seatbelt, Ms. Chelle asked him to promise something, which he refused, and she began assaulting him as a result. He further testified that he sustained a wound as a result of this assault. He testified that both he and Ms. Chelle petitioned the district court for a protective order against each other, both of which were denied on May 29 and 30, 2010. Mr. Ghazzaoui also testified that Ms. Chelle filed a charge of assault against him after this incident, which led to a warrant being issued for his arrest in Anne Arundel County. This warrant was eventually quashed, Mr. Ghazzaoui was not arrested, and the state's attorney eventually dismissed the charge.

Viewing the facts alleged in Mr. Ghazzaoui's complaint and adduced at trial in the light most favorable to Mr. Ghazzaoui, as we must, we determine that the conduct described in Counts 20 and 46 is not "extreme and outrageous," *Hrehorovich*, 93 Md. App. at 800, enough to sustain a claim for IIED. The conduct of which Mr. Ghazzaoui complains is not nearly as extreme and outrageous as the conduct described in *Hines*, *supra*, 157 Md. App. at 546, nor the conduct described in *Lasater*, *supra*, 194 Md. App. at 448-49. This conduct does not go "'beyond all possible bounds of decency[.]'" *See Hrehorovich*, 93 Md. App. at 800 (citing *Harris*, 281 Md. at 567). Ms. Chelle's conduct is not as extreme or outrageous as the four cases *Lasater* noted as the only four instances that the Court of

Appeals have determined to meet the "high threshold" of an IIED claim. 194 Md. App. at 449-50.

Regarding Count 20, Ms. Chelle availed herself of legal avenues during the course of a divorce by informing the police of actions that may or may not have been violations of a protective order. We cannot say that filing of charges with the police during a contentious divorce in which one spouse has openly admitted to tracking the other spouse through a variety of GPS methods was so "extreme and outrageous" to meet the stringent IIED threshold. Likewise, the conduct described in Count 46 does not support an IIED claim. Mr. Ghazzaoui has described a domestic dispute and the filing of charges resulting from that domestic dispute. This conduct "pales in comparison," *see id.*, to the cases described *supra* in which claims have met the "extreme and outrageous" threshold; in fact, this conduct is not even as extreme and outrageous as the cases such as *Hines* and *Lasater* in which this Court has determined conduct not extreme or outrageous enough to sustain an IIED claim. We conclude that, even if we view the facts in the light most favorable to Mr. Ghazzaoui, as we must, the conduct of which he complains is not extreme and outrageous enough to support an IIED claim.

V.

Calculation of Damages

The circuit court's memorandum opinion granting the remittitur did not apportion damages between each individual claim; instead, it apportioned damages by combining the counts associated with individual events as presented by Mr. Ghazzaoui in his complaint.

We are unable to determine, therefore, the correct amount of damages to be vacated under the remittitur because damages from some surviving claims are commingled with the reversed claims. However, the jury did apportion damages for each count. In reversing the judgments on counts 20, 38, 46, and 47, we also vacate the jury's award of damages on those counts. Thus, we remand to the circuit court for the limited purpose of recalculating the amount of remittitur, minus the awards for the reversed claims. *Cf. Batson*, *supra*, 325 Md. at 736-37 ("This Court cannot possibly determine what part of the damage award the jury attributed to the defamation and what portion was improperly awarded for intentional infliction of emotional distress. Consequently, the award of damages must also be vacated . . . ." (citation omitted)).

JUDGMENTS OF THE CIRCUIT COURT FOR ANNE ARUNDEL COUNTY AFFIRMED IN PART, REVERSED IN PART, AND VACATED IN PART.
JUDGMENT REVERSED AS TO THE ABUSE OF PROCESS CLAIMS (COUNTS 38 AND 47) AND THE INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS CLAIMS (COUNTS 20 AND 46). DAMAGES AWARDED FOR THOSE CLAIMS VACATED.
JUDGMENT AFFIRMED AS TO THE REMAINING COUNTS (COUNTS 16, 21, 39, 39, 40, 41, AND 42).
ORDER OF REMITTITUR VACATED AND CASE REMANDED TO THE CIRCUIT COURT FOR A RECALCULATION OF AMOUNT OF REMITTITUR FOR THE REMAINING COUNTS ONLY.
COSTS TO BE DIVIDED.