

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

Nos. 1953 & 1954

September Term, 2016

FRANCISCO GALI

v.

TITI HADILA GALI

Kehoe,
Leahy,
Alpert, Paul E.,
(Senior Judge, Specially Assigned),

JJ.

Opinion by Leahy, J.

Filed: June 12, 2017

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

The parties, Francisco Gali (“Appellant”) and Titi Hadila Gali (“Appellee”) are married and have two minor children in common, F.G. and I.G. On September 19, 2016, Ms. Gali filed a Petition for Protection/Peace Order against Mr. Gali in the Circuit Court for Montgomery County in case number 139240FL.¹ The petition was granted after an *ex parte* hearing held on the same date. On September 21, 2016, Mr. Gali filed a Petition for Protection/Peace Order in the Circuit Court for Montgomery County, case number 139325FL against Ms. Gali.² The petition was granted after an *ex parte* hearing held on the same date. After a postponement and extensions of the temporary orders, the circuit court held a final hearing on October 13, 14, and 25, 2016, whereupon the court denied Mr. Gali’s request for an order of protection from domestic violence, and granted Ms. Gali’s request for an order of protection from domestic violence.

The final protective order granted to Ms. Gali on October 25, 2016, effective through October 25, 2017, mandated, *inter alia*, the following: (1) that Mr. Gali not “abuse, threaten to abuse, and/or harass” Ms. Gali; (2) that Ms. Gali be given custody of F.G. and I.G. and that they “primarily reside with [Ms. Gali]”; (3) that Mr. Gali have visitation with F.G. and I.G.; (4) that Mr. Gali pay “Emergency Family Maintenance in the amount of \$6,000 every month to [Ms. Gali]”; (5) that Ms. Gali be given “exclusive use and

¹ This case was docketed in this court as Case Number 1953, September Term 2016.

² This case was docketed in this court as Case Number 1954, September Term 2016.

possession” of a 2015 Toyota Corolla; (6) that Mr. Gali pay the security deposit for an apartment of Ms. Gali’s choosing; and (7) that Ms. Gali vacate the family home.

Mr. Gali appealed and presents the following questions, which we have slightly rephrased, for our review:³

- I. Did the trial court err in denying Mr. Gali’s petition for protection from domestic violence?
- II. Did the trial court err when it granted custody of the minor children to Ms. Gali?
- III. Did the trial court err in calculating the amount of emergency family maintenance, in ordering Mr. Gali to pay for Ms. Gali’s security deposit for an apartment of Ms. Gali’s choosing, and in granting Ms. Gali use and possession of a vehicle not titled to either party?

For the reasons that follow, we affirm the court’s orders for the most part and vacate only that part of the final protective order that grants Ms. Gali the temporary use and possession of a company car.

³ Mr. Gali phrased his questions presented as follows:

- I. “Did the trial court err in denying Appellant’s Petition for Protection from Domestic Violence where the Appellee admitted multiple times under oath that she assaulted Appellant?”
- II. “Did the trial court err when it granted custody of the minor children to Appellee without giving primary consideration to the welfare of the minor children as required by Md. Family Law Code Ann. § 4-506(d)(8), and by eliminating communication between the parties, except visitation-related communication?”
- III. “Did the trial court err in calculating the amount of emergency family maintenance, in ordering the Appellant to pay for the Appellee’s security deposit for an apartment of Appellee’s choosing, and in granting the Appellee use and possession of a vehicle not titled to either party?”

BACKGROUND

The parties were married in July of 2009 after meeting in Indonesia. Ms. Gali, a native of Indonesia, immigrated to the United States as a result of the marriage. The parties have two children: “F.G.,” seven years old at the time of the protective order hearing, and “I.G.,” three years old at the time of the protective order hearing. Before their separation in June of 2016, the parties lived together with their children in Potomac. Mr. Gali is the chief executive officer of Gali Service Industries, a business that he started, which is apparently very profitable. He also has an S Corporation, which he uses to “pass through income that is related to [Gali Services Industry].”

Ms. Gali testified at the final protective order hearing that she filed for the protective order because she felt “anxious and afraid” of Mr. Gali. She testified regarding several incidents during which Mr. Gali had physically abused her. Descriptions of these events follow.

A. The December 31, 2008 Incident

Ms. Gali testified that, on December 31, 2008, she witnessed Mr. Gali kiss another woman in front of her several times. She was pregnant with F.G. at the time. She questioned him about why he kissed another woman in front of her, and he became angry and pushed her, so she “hit him back.” She specified that he pushed her “[o]n [her] body.”

B. The September 18, 2011 Incident

Ms. Gali testified that, on September 18, 2011, she was driving Mr. Gali and their infant son home when she became lost on the road. Mr. Gali was drunk, became angry, and started hitting her on her head and pulled her hair while she was still driving. Ms. Gali

then stopped the car on the side of the road and hit him back in an attempt to defend herself and protect their son.⁴ Ms. Gali further stated that, afterwards, she drove to Mr. Gali's parent's house, whereupon he called the police and told them that she only had a green card (in what appears to have been an attempt to raise immigration issues). When the police arrived, they arrested Mr. Gali.⁵

Ms. Gali further testified that the police asked her to follow them to the police station to request a protective order, and she received a temporary protective order for four days. Ms. Gali testified that, four days after the incident, Mr. Gali's cousin came to her and demanded that she sign a typed statement stating that he was a good man and a good father and that she assaulted Ms. Gali, and asking the court to drop the case. Ms. Gali informed the court that the cousin threatened that if she did not sign it, Mr. Gali would divorce her the very next day. This letter was admitted into evidence.

On the other hand, Mr. Gali testified that, during the drive, Ms. Gali began to drive erratically and so he had grabbed the steering wheel, whereupon Ms. Gali "violently attacked [him] and scratched [him] in the face." He testified that they then drove to his parents' house, where he called the police.

⁴ On cross examination, Ms. Gali admitted to inflicting injury on Mr. Gali, but affirmed that she was "defending [her]self because [she] was driving" and that she "was trying to protect both him, as well as [her] son."

⁵ The record does not reflect the reason why Mr. Gali was arrested.

The court admitted into evidence a picture of Mr. Gali’s face that had scratch marks on it. Mr. Gali also denied writing the letter Ms. Gali signed and denied coercing Ms. Gali to sign it.

C. The November 10, 2015 Incident

Ms. Gali also testified that on November 10, 2015, Mr. Gali was drunk and became angry with her around 8:00 p.m. in the evening at their home in Potomac. During the incident Mr. Gali threatened her with a large pick axe and pulled her ear until it bled. He also threatened F.J. and told the two of them that he would burn her alive with gasoline. Ms. Gali said that Mr. Gali then, while drunk, left the house and took F.J. to Virginia.

Ms. Gali then left the home and attempted to call 911. After realizing that her cell phone had been blocked, she walked to a neighbor’s house to call 911.⁶ The police arrived, but she did not ask for a protective order because she was afraid.

The neighbor, Mercedes Meyer, testified that Ms. Gali came to her house that evening. Ms. Gali’s arm was injured, and she looked “shattered” and was “extremely upset.” Ms. Meyer said that Ms. Gali had an injured arm and that she gave her ice to treat it.

Koesoema Foley, a friend of Ms. Gali, testified that Ms. Gali called her in November 2015 and that, as a result of that phone conversation, she offered Ms. Gali a place to stay at her home in West Virginia. The next day, she drove from her home in West Virginia to Potomac to pick up Ms. Gali and I.G. and noticed bruises on Ms. Gali’s ear and arms. After

⁶ Ms. Gali testified that, after each incident like this, her phone was “blocked.” We take this to mean that Mr. Gali removed her from the family cell phone plan.

a few days in West Virginia, Ms. Foley drove Ms. Gali and I.G. back to their home in Potomac.

D. The June 10, 2016 Incident

On June 10, 2016 the parties were in a hotel in Santa Barbara, California, attending the wedding of a friend. Ms. Gali testified at the hearing that they went to a Vietnamese restaurant when Mr. Gali suddenly disappeared. She could not find him, so she returned to the hotel and then searched for him in the lobby and at the wedding reception. She eventually found him at the bar of the Vietnamese restaurant, drinking, where he ordered her a drink. She left the bar and returned to the hotel room when he said that she could leave if she was not comfortable.

Eventually, Mr. Gali returned to the room and began arguing with Ms. Gali and told her she should leave because he paid for the hotel. During this argument, he hit her with a purse and grabbed her hair. Photographs depicting large bruises on Ms. Gali's arms and hands were admitted into evidence at trial.

Ms. Gali called the police, and they arrested Mr. Gali. Ms. Gali filed for and was granted a temporary protective order in California. Upon her return to Maryland, Ms. Gali also filed for a protective order in Maryland as a result of the incident, but she was unable to obtain one because the California order was still in effect. Ms. Gali testified that, after the incident, Mr. Gali blocked her cell phone, closed her credit card, and prevented her from using a car.

At the final protective order hearing in Maryland, Mr. Gali testified that Ms. Gali started this fight after she failed to meet him at a Vietnamese restaurant after she had too

much to drink. He said that Ms. Gali only received bruises that evening because he was defending himself, and that he was arrested because of this incident and had to spend the evening in county jail in California. Mr. Gali introduced photographs depicting small scratches on his face which he said he received during the altercation with Ms. Gali.

E. The August 10, 2016 Incident

On August 10, 2016, Mr. Gali and Ms. Gali were on a cruise to Alaska and Canada with their children and Mr. Gali's family. Ms. Gali testified that she and the children were in their cabin one evening when Mr. Gali came in, appearing drunk. He became angry with Ms. Gali, took her passport, and told her to leave the cabin without the children, because he had paid for the room. She told Mr. Gali that she was going to report the incident to the ship's security, and when she did so, Mr. Gali slammed the telephone into her right shoulder. Ms. Gali also testified that Mr. Gali told her that she was "his slave," and that he owned her. A photograph depicting a large bruise on Ms. Gali's shoulder, which Ms. Gali said was a result of Mr. Gali's striking her with the telephone, was admitted into evidence.

Ms. Gali testified that security eventually responded to the cabin and that they escorted her out of the room. Mr. Gali left the cruise the next day and texted Ms. Gali, telling her to get the children back to their home and to go back to Indonesia. Mr. Gali further advised, through his text message, that Ms. Gali could not return to "his" home, that she could not drive his cars, and that she did not have health insurance. Additionally, Mr. Gali advised Ms. Gali in the text that he had notified immigration that she was in illegal possession of two passports.

Mr. Gali testified to the contrary, claiming that it was Ms. Gali who initiated the disagreement after becoming intoxicated earlier in the day. He said that he felt threatened after Ms. Gali cornered him and scratched his face, and that as a result he “had to defend [himself].” He testified that *he* called security, but that she hung up the phone, whereupon security called back, and then came to the room. He further said that the parties were sequestered in separate rooms and that Canadian police investigated the incident when they docked in Victoria.

F. Other Incidents and Issues

Ms. Gali also testified that Mr. Gali kept a number of weapons in the home, including an AK-47, two or three pistols, and sharp tools similar to machetes. She alleged that Mr. Gali kept the AK-47 under the couple’s bed and a pistol and a machete under his pillow. Mr. Gali, on the other hand, testified that he possessed a gun collector’s license and that he kept antique guns in the home. He denied keeping any handguns in the home and explained that the weapon that Ms. Gali described as an AK-47 was in fact a competition air rifle. He further claimed that he kept the guns in a secured safe in the garage of the home. Mr. Gali admitted to also owning a collection of knives and swords and keeping them at the house. On cross examination, Mr. Gali admitted that, at least some of the bladed weapons were not kept under lock and key, and a photograph of a scythe-type blade hanging on the wall was admitted into evidence.

Ms. Gali testified that during the incidents of physical violence, Mr. Gali was drunk, and she introduced several photographs taken in 2015, displaying Mr. Gali intoxicated at the home. In each, Mr. Gali appears to be unconscious while lying on the floor, or is

unconscious while lying halfway between the floor and the bed or a piece of furniture. In one, a small child, who Ms. Gali testified was the couple's son, is lying on the bed, while Mr. Gali is passed out, halfway on a couch and halfway on the floor. In the foreground appears a large black case, in which Ms. Gali said Mr. Gali kept an AK-47 and a machete.

According to Ms. Gali, Mr. Gali installed a GPS tracker on her car in order to monitor her movements and also installed several cameras inside the home. She said that on one occasion she drove to West Virginia to visit her friend Ms. Foley, mentioned *supra*, and that, during the visit, she saw Mr. Gali's car near the friend's house. Ms. Foley confirmed that she saw Mr. Gali's car in West Virginia during Ms. Gali's visit.

Mr. Gali also routinely accessed her email and cell phone, and that he admitted to erasing her iPad and emails. Ms. Gali introduced into evidence email notifications advising that her iPad and iPhone had been erased on a number of occasions.

Mr. Gali, however, claimed that Ms. Gali was "violent" with their children. He said that she hit their son and would shake their daughter when the daughter misbehaved. According to Mr. Gali, Ms. Gali did not provide proper supervision of the children when they were in her care. Mr. Gali called as a witness his housekeeper, Mierna Canales, who testified that she had seen the children unsupervised while in Ms. Gali's care when Ms. Gali locked herself in her bedroom.⁷ Mr. Gali also called Ruben Gonzalez, a person who does construction jobs around the parties' house, to testify. He testified that, one time, he observed Ms. Gali get upset at I.G. for "touch[ing] things" around the house and that I.G.

⁷ Ms. Canales works for Home Made Solutions, which is Mr. Gali's mother's company. She has known Mr. Gali and his mother for 13 years.

started crying. Monica Gali, Mr. Gali’s sister, also testified, via phone, that she had witnessed Ms. Gali shaking F.G. on one occasion.

Maria Rios Gomez, the Galis’ babysitter and housekeeper, testified that she had concerns about Ms. Gali’s childcare because she traveled a lot and would shout at the children. She said that she had seen Ms. Gali hit I.G. twice. Further, she stated that she was concerned because Ms. Gali had left the children in the care of employees or workers, such as the gardener. She testified that Mr. Gali was “a good parent.” On cross examination, Ms. Gali’s counsel attempted to impeach Ms. Rios Gomez on the basis that she was paid by Mr. Gali and his parents.

Finally, Mr. Gali also testified that, in September 2015, Ms. Gali accused him of cheating on her. She then destroyed a portrait of the family, and the court admitted into evidence a photograph of this destroyed portrait.

G. The Court’s Ruling

On the third day, October 25, 2016, at the conclusion of the hearing, the court announced its ruling. The court made several credibility determinations, observing that Mr. Gali called employees and family members to testify on his behalf, suggesting that these persons might have a reason to testify favorably on Mr. Gali’s behalf. As to Maria Rios Gomez’s testimony, the court stated that while it believed that Ms. Gali might have become frustrated with F.G. on occasion, it did not find Ms. Rios Gomez’s testimony credible generally. On the other hand, the court then stated that Mercedes Meyer, the next door neighbor, was the most neutral person to testify, that the court believed her, and that Ms. Meyer had testified to her observations of injuries to Ms. Gali. The court also observed

that the testimony of Ms. Foley, the friend from West Virginia, corroborated Ms. Gali's testimony.

The court found it “telling” that, in situations in which the police intervened, the police arrested Mr. Gali, but not Ms. Gali. The court noted the differences between the injury photos that Mr. Gali and Ms. Gali introduced, respectively, finding that Ms. Gali's photos were of “big bruises,” whereas the scratches on Mr. Gali were more consistent with “[d]efensive wounds.”

The court then stated its belief that this was a situation of domestic abuse and control perpetuated by Mr. Gali on Ms. Gali:

The [c]ourt does find this is a situation, classic domestic violence situation whereby the abuser has control over the money, which is corroborated by the circumstance that she's in today. Worried about whether she's going to get tossed out of the apartment, worried about the fact that she doesn't have a car. All those things are classic. Control over her telephone. . . . Taking the car away from her, deleting her iPad, the GPS, cameras in the house

The court said of the notarized letter Ms. Gali allegedly wrote to the court after the 2011 incident:

Again, classic recantation by a victim of domestic violence. Mr. Gali testified that this was written by Ms. Gali. I don't believe that for one second. The last line is her asking the court to dismiss the charges against Mr. Gali, that he's a kind husband and a loving father and has no history of abus[]e or violence of any kind. Maybe he didn't at that point, maybe that line is actually true. I have made this statement of my own free will and it is the truth. Somebody who is just writing an uncoerced statement isn't putting that in there. I don't buy that for a second.^[8]

⁸ We observe that the letter contains other examples of statements that were unlikely written by Ms. Gali of her own volition, such as: “Enclosed are photos of [Mr. Gali] that were taken that night at his parent's house that show the wounds.”

The court also found the weapons around the house and the evidence of alcohol abuse to be troubling.

The court announced its ruling, denying Mr. Gali’s petition and granting Ms. Gali’s petition:

So the [c]ourt is . . . denying . . . Mr. Gali’s petition . . . and granting Ms. Gali’s petition[for a] final protective order, based on the reasons that I just stated. I do find by a preponderance of the evidence that she has been the victim of abuse by Mr. Gali and that I do believe that there have been threats against her life made by Mr. Gali. So the . . . protective order will last for a year. . . .

Court finds that the abuse did occur November 2015, June 2016, August 10th, 2016, by Mr. Gali on Ms. Gali. The order will be in effect through October 25th, 2017. Mr. Gali’s not to abuse or threaten to abuse Ms. Gali. . . .

Custody of F.[G.] and I.[G.] is granted to Ms. Gali. The [c]ourt does find that she was the primary caregiver all these years, that for the time being, that she’s not working. Mr. Gali is. Care of the children has been with other people and it should be with their mother, ideally, at this moment, and I am concerned that there has been an alienation of these children by father. I don’t believe that there has been a concern for abuse. If there was, the protective order would have been a request for protect[ion] f[or] the children. Child Welfare might have been called. Certainly I.[G.] wouldn’t be spending all the time she’s spending with her mother if there was concern for abuse[.]

After delineating visitation hours between Mr. Gali and the children, the court ordered that Mr. Gali provide \$6,000.00 a month in emergency family maintenance to Ms. Gali for housing, food, and other necessities to care for the children. The court granted Ms. Gali “exclusive use and possession” of a 2015 Toyota Corolla—the company car Ms. Gali had been driving— also ordering that any GPS be taken off the car. The court also ordered that Mr. Gali pay a security deposit for an apartment for Ms. Gali:

Last thing is security deposit for any apartment, Mr. Gali’s going to have to pay the security deposit paid at the one, where she’s living now.^[9] That can be used towards the security deposit for the new apartment. **And [Ms. Gali] will be the one picking out the apartment, preferably in Montgomery County. So that . . . the kids are close to both parents.**

(Emphasis added).

On the same day, the court entered a final protective order commanding, *inter alia*, the following: (1) that Mr. Gali not “abuse, threaten to abuse, and/or harass” Ms. Gali; (2) that Ms. Gali be given custody of F.G. and I.G. and that they “primarily reside with [Ms. Gali]”; (3) that Mr. Gali have visitation with F.G. and I.G.; (4) that Mr. Gali pay “Emergency Family Maintenance in the amount of \$6,000 every month to [Ms. Gali]”; (5) that Ms. Gali be given “exclusive use and possession” of a 2015 Toyota Corolla; (6) that Mr. Gali pay the security deposit for an apartment of Ms. Gali’s choosing; and (7) that Ms. Gali vacate the family home. The court also entered an order denying Mr. Gali’s request for a final protective order.

Mr. Gali filed a timely notice of appeal on November 18, 2016.¹⁰

⁹ At the time of the proceedings, Ms. Gali was living in an apartment in Falls Church, Virginia. Mr. Gali was paying for this apartment.

¹⁰ The record reflects that Mr. Gali filed a complaint for limited divorce and custody sometime in October or November 2016.

Additionally, on February 21, 2017, Mr. Gali filed a motion to vacate the final protective order, pursuant to Rule 2-535(b). In his motion, he argued that Ms. Gali’s Indonesian-English interpreter’s lack of skill constituted an “irregularity” under Maryland Rule 2-535(b). The court denied this motion on March 31, 2017.

DISCUSSION

I.

Petition for Protection from Domestic Violence

Mr. Gali first argues broadly that he is “a victim of domestic violence at the hands of Appellee,” and that the court “made several findings of fact that [were] clearly erroneous,” when it “determined that [he] was the only aggressor and [] determined that [she] had acted primarily in self-defense.” Specifically, Mr. Gali contends that the “trial court abused its discretion when it failed to issue mutual protective orders.”¹¹ We conclude that the court did not abuse its discretion in not issuing mutual protective orders.

We review a denial of a protective order for abuse of discretion. *See Ricker v. Ricker*, 114 Md. App. 583, 592 (1997). When seeking a protective order, the petitioner bears the burden of showing by a “preponderance of the evidence that the alleged abuse occurred.” Maryland Code (1984, 2012 Repl. Vol., 2016 Supp.), Family Law Article (“FL”), § 4-506(c)(1)(ii). “When conflicting evidence is presented, we accept the facts as found by the hearing court unless it is shown that its findings are clearly erroneous.” *Piper v. Layman*, 125 Md. App. 745, 754 (1999). “The determination of credibility is a matter left entirely to the trial judge who has the opportunity to gauge and observe the witnesses’ behavior and testimony during the trial.” *Ricker v. Ricker*, 114 Md. App. 583, 592 (1997).

The statute governing the issuance of final protective orders provides as follows:

(c) (1) If the respondent appears before the court at a protective order hearing or has been served with an interim or temporary protective order, or the court otherwise has personal jurisdiction over the respondent, the judge:

¹¹ Ms. Gali has not filed a brief on appeal.

- (i) may proceed with the final protective order hearing; and
- (ii) **if the judge finds by a preponderance of the evidence that the alleged abuse has occurred**, or if the respondent consents to the entry of a protective order, **the judge may grant a final protective order to protect any person eligible for relief from abuse.**

(Emphasis added). Abuse is defined in FL § 4-501(b)(1) as:

- (i) an act that causes serious bodily harm;
- (ii) an act that places a person eligible for relief in fear of imminent serious bodily harm;
- (iii) assault in any degree;
- (iv) rape or sexual offense under §§ 3-303 through 3-308 of the Criminal Law Article or attempted rape or sexual offense in any degree;
- (v) false imprisonment; or
- (vi) stalking under § 3-802 of the Criminal Law Article.

FL § 4-506(c)(1).

The legislature anticipated situations such as the present one—in which both parties have filed petitions for relief from abuse—when it enacted FL § 4-506(c)(3), which currently provides:

- (i) Subject to the provisions of subparagraph (ii) of this paragraph, in cases where both parties file a petition under § 4-504 of this subtitle, the judge may issue mutual protective orders if the judge finds by a preponderance of the evidence that mutual abuse has occurred.
- (ii) The judge may issue mutual final protective orders **only if** the judge makes a detailed finding of fact that:
 1. **both parties acted primarily as aggressors; and**
 2. neither party acted primarily in self-defense.

(Emphasis added).

Mr. Gali argues that the “trial court made the clearly erroneous determination that [Ms. Gali] acted primarily in self-defense.” He argues that this “determination is not

supported by the evidence or by [her] own testimony” that she assaulted him on three different occasions.

Specifically, Mr. Gali argues that Ms. Gali was “clearly an aggressor” in the September 2011 incident where the parties testified that they had had an altercation while Ms. Gali was driving. Ms. Gali had testified that she became lost while driving and Mr. Gali, who was intoxicated, became “angry, and then pulled [her] hair, and slam[med her], he hit [her], and automatically [she] stopped the car and [] returned the hits.” But Mr. Gali argues that “[s]topping a car and turning to hit someone is a premeditated act, not an act of self-defense.”

Mr. Gali argues that Ms. Gali was not acting in self defense in regard to the December 2008 incident when she “hit him back” after he had pushed her, because “[h]itting someone back” is not an act of self defense.” And, in regard to the June 12, 2016 incident, Mr. Gali claims that Ms. Gali recanted her version of events in an email to Mr. Gali’s mother, and admitted to “inflicting injuries” on Mr. Gali during the altercation. He contends that this email contradicts the court’s conclusion that she acted primarily in self-defense. When shown a copy of this email at trial, however, Ms. Gali denied ever writing it and testified that Mr. Gali frequently accessed her email. Further, while Mr. Gali quotes the email in his brief, the email was never admitted into evidence at trial¹² and was therefore not substantive evidence for the circuit court.

¹² Counsel for Mr. Gali questioned Ms. Gali about the email, but Ms. Gali’s counsel objected to this line of questioning when Ms. Gali denied writing the email. The court sustained the objection, and Mr. Gali’s counsel moved on.

As previously stated, a court may grant mutual protective orders *only if* the court makes a detailed finding of fact that *both* parties acted as aggressors and that *neither* party acted primarily in self-defense. FL § 4-506(c)(3). Thus, in order to prevail, Mr. Gali must persuade us that the court was clearly erroneous in (1) not making a detailed finding that Ms. Gali acted primarily as an aggressor *and* (2) finding that Ms. Gali acted primarily in self-defense. *See id.* This uphill trek is too steep for Mr. Gali.

In *Bricker v. Warch*, Judge Moylan, writing for this Court, explained review for clear error:

Although it is not uncommon for a fact-finding judge to be clearly erroneous when he is affirmatively **PERSUADED** of something, it is, as in this case, almost impossible for a judge to be clearly erroneous when he is simply **NOT PERSUADED** of something. As to the critical difference between applying the “clearly erroneous” standard of appellate review 1) to a case of a fact-finding judge’s being actually **PERSUADED** and 2) to a case of a fact-finding judge’s being simply **UNPERSUADED**, this Court observed with respect to that difference in *Starke v. Starke*, 134 Md. App. 663, 680-81, 761 A.2d 355 (2000):

[I]t is far easier to sustain as not clearly erroneous the decisional phenomenon of not being persuaded than it is to sustain the very different decisional phenomenon of being persuaded. Actually to be persuaded of something requires a requisite degree of certainty on the part of the fact finder (the use of a particular burden of persuasion) based on legally adequate evidentiary support (the satisfaction of a particular burden of production by the proponent). There are with reasonable frequency reversible errors in those regards. Mere non-persuasion, on the other hand, requires nothing but a state of honest doubt. It is virtually, albeit perhaps not totally, impossible to find reversible error in that regard.

152 Md. App. 119, 137 (2003). In short, the circuit court was not clearly erroneous when it was *not* persuaded that Ms. Gali acted *primarily* as an aggressor.

We observe that Mr. Gali testified at trial and had the opportunity to provide his own version of events for each of these altercations. Our own examination of the record reveals that Mr. Gali did give conflicting versions of the events testified to by Ms. Gali. We leave the determination of credibility, however, “entirely to the trial judge who has the opportunity to gauge and observe the witnesses’ behavior and testimony during the trial.” *Ricker*, 114 Md. App. at 592. Where, as here, the parties give two different versions of the same event, we accept the circuit court’s finding of facts unless “it is shown that its findings are clearly erroneous.” *Piper*, 125 Md. App. at 754. We find no such error here.

In issuing its ruling and denying Mr. Gali’s petition, the court noted that it reviewed the evidence and considered the credibility of the witnesses. In short, the court did not find Mr. Gali’s description of the marriage to be credible, nor did it find credible the bulk of the testimony from Mr. Gali’s witnesses—most of whom worked for Mr. Gali or his family. The court also noted that it found telling that, in the instances where the police had been called and had the opportunity to interview the parties and observe any injuries, they had arrested Mr. Gali. The court found:

that this is a situation, classic domestic violence situation whereby the abuser has control over the money, which is corroborated by the circumstance that she’s in today. Worried about whether she’s going to get tossed out of the apartment, worried about the fact that she doesn’t have a car. All those things are classic. Control over telephone. [Ms. Gali] testified, well, she said she didn’t need it anymore. Maybe she did say that, but, again, classic, classic abuse, control over everything.

We determine that the court’s findings are insightful and reasonably based on the evidence presented. In light of the foregoing we conclude that the trial court was not clearly erroneous in finding that Ms. Gali acted primarily in self-defense and not primarily as an

aggressor. The circuit court did not abuse its discretion by not issuing mutual protective orders pursuant to FL § 4-506(c)(3).¹³

II.

Custody of the Minor Children

Mr. Gali next argues that the “trial court abused is [sic] discretion when it failed to consider the welfare of the minor children in establishing a custody and visitation schedule.” He alleges that “trial court without knowing where the [Ms. Gali] would choose to live, and whether or not it would be an appropriate or safe home, ripped the minor children away from the only home they have ever known and issued a draconian visitation schedule.” He further argues that the trial court should not have placed the children with Ms. Gali because multiple witnesses described her as abusive to the children. We conclude

¹³ Mr. Gali additionally argues that the “trial court erred when it failed to consider [his] particular circumstances and perception when it considered whether or not he had a reasonable fear of [Ms. Gali].” Mr. Gali maintains that the court failed to take into account his testimony that he was sexually abused as a child and that Ms. Gali would take advantage of this fact in cornering him. Although this argument is not particularly clear, he appears to be arguing that the court was clearly erroneous in not finding that he acted primarily in self-defense.

Mr. Gali is correct that the proper standard was an “individualized objective one.” *See Katsenelenbogen v. Katsenelenbogen*, 365 Md. 122, 138-39 (2001). Nonetheless, this argument is to no avail. As we have explained, the record reflects a judge who heard three days of testimony, examined conflicting evidence, and made credibility determinations. At the end of those three days, Mr. Gali simply lost the credibility battle. The circuit court was not clearly erroneous in not finding that he was acting primarily in self-defense.

Furthermore, even if Mr. Gali could prevail on this argument—even if the court found that he was acting in self-defense—Mr. Gali would not be entitled to a mutual protective order because it was *also* necessary for him to convince the court that Ms. Gali was acting primarily as an aggressor.

that the court did not abuse its discretion when it awarded custody to Ms. Gali and visitation to Mr. Gali.

Pursuant to FL § 4-506(d), the court’s final protective order may:

(7) award temporary custody of a minor child of the respondent and a person eligible for relief;

(8) establish temporary visitation with a minor child of the respondent and a person eligible for relief on a basis which gives primary consideration to the welfare of the minor child and the safety of any other person eligible for relief.

“[O]nce a court has found from the evidence that abuse has occurred and that a protective order is needed to provide protection for the petitioner or other person entitled to relief, the court’s focus must be on fashioning a remedy that is authorized under the statute and that will be most likely to provide that protection.” *Katsenelenbogen*, 365 Md. at 136. The reviewing court accepts the “facts as found by the hearing court unless it is shown that its findings are clearly erroneous.” *Piper*, 125 Md. App. at 754. Issues of credibility are to be determined by “the trial judge who has the opportunity to gauge and observe the witnesses’ behavior and testimony during the trial.” *Ricker*, 114 Md. App. at 592.

Mr. Gali testified that he is currently employed and that the parties’ long-time nanny takes care of the children when they are not in school or daycare. The nanny, Maria Rios Gomez, testified that she works full time Monday through Friday in the marital home and that her hours are typically from 7:30 a.m. to 8:00 p.m. or 8:30 p.m., when she’s finished she putting the children to bed. Additionally, Mr. Gali testified that, since the parties’ separation, the children were living with him in the marital home in Potomac and that Ms.

Gali had visitation with the children for several hours four days a week. Ms. Gali was permitted more visitation, including overnights, with I.G. than with F.G.

In stark contrast to the foregoing, Mr. Gali nonetheless testified that he sought the protective order against Ms. Gali because he was “afraid [Ms. Gali] would come to the house and try to break in” to retrieve her personal belongings. He claimed he was also afraid because on “many occasions she’s threatened [him] and been violent, and [he] thought that she would try to set [him] up in any way possible to get [him] in trouble.” Notably, Mr. Gali’s petition did not seek any relief on behalf of the children beyond asking the court that Ms. Gali not be allowed to go to the children’s school.

In awarding custody of the minor children to Ms. Gali, the court made the following factual findings:

The court does find that she was the primary caregiver all these years, that for the time being, that she’s not working. [Mr. Gali] is. Care of the children has been with other people and it should be with their mother, ideally, at this moment, and I am concerned that there has been alienation of these children by father. I don’t believe that there has been concern for abuse. If there was, the protective order would have been a request for protective [sic] from the children. Child welfare might have been called. Certainly [I.G.] wouldn’t be spending all the time she’s spending with her mother if there was concern for abuse. I don’t believe that either.

The court then ordered that Mr. Gali would have visitation every other weekend and three evenings a week on the off-weekends.

We discern no error in the court’s findings of fact and no abuse of discretion in the court’s award of custody to Ms. Gali under the final protective order. The record and the court’s findings articulated in the custody order demonstrate that the court gave primary consideration to the welfare of the minor children. The court heard from Mr. Gali and his

witnesses regarding Ms. Gali’s alleged abuse of the children, and it simply did not find the testimony credible. Thus, we hold that the court did not err or abuse its discretion in granting temporary custody to Ms. Gali and temporary visitation to Mr. Gali.

III.

The Emergency Family Maintenance Award

Mr. Gali advances three arguments regarding the relief the court granted to Ms. Gali in its final protective order. First, he contends that the “trial court erred in its calculation of emergency family maintenance when the trial court ordered emergency family maintenance in an amount higher than [Ms. Gali] sought when [Mr. Gali] would be unable to meet his family obligations and pay the emergency family maintenance.” Second, he maintains that the “trial court erred in ordering [Mr. Gali] to pay the security deposit at an apartment of [Ms. Gali]’s choosing.” Third, he argues that the “trial court erred in ordering use and possession of a company car to [Ms. Gali] in violation of [FL] § 4-506(d)(10).”

We address each of these three arguments in turn.

A. Monthly Emergency Family Maintenance

At the hearing, Ms. Gali sought \$5,000.00 per month in emergency family maintenance. The court ordered Mr. Gali to pay Ms. Gali \$6,000.00 per month in emergency family maintenance to be used for “housing, food, taking care of the kids.” The court assumed that Ms. Gali would rent a three-bedroom apartment in Montgomery County so that the children would be proximate to their father.

Pursuant to FL § 4-506(d)(9), a final protective order may “award emergency family maintenance as necessary to support any person eligible for relief to whom the respondent has a duty of support.” Emergency family maintenance is defined as:

A monetary award given to or for a person eligible for relief to whom the respondent has a duty of support under this article based on:

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

FL § 4-501(g). When fashioning appropriate relief in a domestic violence case, the court’s concern “is to do what is reasonably necessary—no more and no less—to assure the safety and well-being of those entitled to relief.” *Katsenelenbogen*, 365 Md. at 137.

Mr. Gali argues that he is unable to pay \$6,000.00 per month “without going deep into debt,” because “[a]fter the mortgage and health insurance are paid and before taxes are paid, [he] is left with approximately \$4,600 per month.”

At the hearing, Ms. Gali testified that, while she did not know how much Mr. Gali made per year, she had overheard him saying that he made \$800,000.00 per year. Mr. Gali denied making that much per year and testified that he made \$7,000.00 per month in salary from the company he founded. Mr. Gali further testified that he made additional income from working as a consultant, which brought his monthly income to \$13,000.00 per month. Mr. Gali admitted to making over \$400,000.00 per year in 2015, \$225,000.00 of which was salary. He further added that his 2016 income was projected to be “a little over \$200,000.” Only upon cross examination did Mr. Gali admit to an additional \$100,000 of income received in 2016 due to the sale of an Indonesian business in which he had an interest. Mr. Gali testified that he pays \$1,700.00 in health insurance for the family, and \$6,700.00 per

month on the mortgage of the family home. Mr. Gali further explained that he runs expenses through his company, including expenses to pay the nanny. Mr. Gali also testified that the car Ms. Gali was driving and the cell phone she was using were owned by the company.

In issuing its order, the court noted several times that it did not find Mr. Gali credible. Mr. Gali was not particularly forthcoming with his finances during his direct examination. As stated previously, it was only upon cross-examination that he revealed an additional \$100,000.00 in income for 2016 when specifically asked about an Indonesian company in which he had an interest. Mr. Gali's brief to this court does not factor in this additional \$100,000.00 in income when arguing that the \$6,000.00 per month ordered by the court is too much for him to pay.

While it is true that Ms. Gali asked for only \$5,000.00 per month and the court ordered Mr. Gali to pay \$6,000.00 per month, he presents no authority that would make this fact alone a basis for error. Further, Ms. Gali testified that, immediately after the August 2016 incident she did not have access to cash, a credit card, or transportation. Ms. Gali testified that in the immediate aftermath of the parties' separation she had no financial resources. Ms. Gali's counsel sought emergency family maintenance so that she could secure "an apartment, transportation, food, and stuff to put in the apartment," and stated that Ms. Gali had "no other financial resources." We repeat the relevant ruling by the court that

this is a situation, classic domestic violence situation whereby the abuse has control over the money, which is corroborated by the circumstance that she's

in today. Worried about whether she’s going to get tossed out of the apartment, worried about the fact that she doesn’t have a car.

In these circumstances and in light of the foregoing, we assign no error to the court’s award of emergency family maintenance. The court did “what [wa]s reasonably necessary . . . to assure the safety and well-being of those entitled to relief.” *See Katsenelenbogen*, 365 Md. at 137.

B. Apartment Security Deposit

At the conclusion of the hearing, the court ordered Mr. Gali to pay the security deposit for an apartment of Ms. Gali’s choosing, “preferably in Montgomery County.” Mr. Gali argues that the court erred in ordering him to pay the security deposit because “[t]here is no provision of [FL] § 4-506 which contemplates a one-time payment outside of the ordered monthly emergency family maintenance.” He also argues that even if the “trial court was permitted to order a one-time payment in addition to emergency family maintenance, the trial court failed to set any parameters or limits on this requirement.” We disagree with this argument.

As stated previously, pursuant to FL § 4-506(d)(9) a final protective order may “award emergency family maintenance as necessary to support any person eligible for relief to whom the respondent has a duty of support.” Emergency family maintenance is defined as:

A monetary award given to or for a person eligible for relief to whom the respondent has a duty of support under this article based on:

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

FL § 4-501(g). Further, FL § 4-506(d) provides, in pertinent part:

(d) The final protective order may include any or all of the following relief:

* * *

(9) award emergency family maintenance as necessary to support any person eligible for relief to whom the respondent has a duty of support under this article, including an immediate and continuing withholding order on all earnings of the respondent in the amount of the ordered emergency family maintenance in accordance with the procedures specified in Title 10, Subtitle 1, Part III of this article;

* * *

(14) order any other relief that the judge determines is necessary to protect a person eligible for relief from abuse.

(Emphasis added).

Contrary to Mr. Gali’s argument, there is nothing within FL § 4-506 or § 4-501 that limits a court’s order to *monthly* emergency family maintenance. The court may order “a monetary award,” based on “the financial needs” and “resources available” to the person eligible for relief and the respondent. FL § 4-501(g). As discussed previously, Ms. Gali had no financial resources available to pay the security deposit needed to rent an apartment. Further, the court may “order any other relief that judge determines is necessary to protect a person eligible for relief from abuse.” A security deposit for a new place for Ms. Gali and the children to live certainly falls within that expansive category.

Mr. Gali argues that, because the trial court “failed to set any parameters or limits” on the security deposit amount, the court “could not make a determination about whether or not [Mr. Gali] had the ability to pay,” and that Ms. Gali could choose an apartment with a security deposit of \$10,000.00. He further argues that Ms. Gali “could theoretically

choose a home in Florida or Alaska, far away from [him], his parents’ and the home and community the children have always known.”

Both of these arguments are without merit because there are both external (real world) and internal (relating to the final protective order itself) constraints and parameters that limit Ms. Gali’s choices regarding the location of the new apartment and the corresponding amount of the security deposit. First, the court’s order of \$6,000.00 per month in emergency family maintenance limits the cost of the housing she is able to rent because she would need to pay monthly rent and expenses out of that amount. Because security deposits correspond to monthly rent costs,¹⁴ it is extremely unlikely that an apartment in Ms. Gali’s budget would require a \$10,000 security deposit, as Mr. Gali portends.

Second, despite the order’s lack of explicit parameters, it would be difficult, if not impossible for Ms. Gali to rent an apartment far away from Mr. Gali’s home. The court ordered Mr. Gali to have visitation with the children “Friday after school until Sunday at 6:00 p.m. every other weekend,” and “Monday, Wednesday, and Friday on the off weekends, from end of school until 6:00 p.m.” Ms. Gali must comply with the court-ordered visitation schedule. Given her lack of resources, the visitation schedule effectively prohibits Ms. Gali from renting an apartment a great distance from Mr. Gali’s home.

¹⁴ In fact, in Maryland, a landlord *cannot* request a security deposit in excess of the cost of two months’ rent. *See* Maryland Code (1974, 2015 Repl. Vol.), Real Property Article (“RP”), § 8-203(b)(1).

Further, the court expressed its preference that Ms. Gali choose an apartment in Montgomery County in its oral opinion. We conclude that there was no abuse of discretion when the court ordered Mr. Gali to pay a security deposit for Ms. Gali’s new apartment.¹⁵

C. Use and Possession of the Company Vehicle

The court granted Ms. Gali the “exclusive use and possession” of a Toyota Corolla which was in her possession at the time of the final protective order hearing. Mr. Gali argues that the vehicle in question was a company vehicle that that the “court had no authority to award a company vehicle to [Ms. Gali].”

In this respect, the circuit court erred. Pursuant to FL § 4-506(d)(10), the court may

[a]ward temporary use and possession of a vehicle jointly owned by the respondent and a person eligible for relief to the person eligible for relief if necessary for the employment of the person eligible for relief or for the care of a minor child of the respondent or a person eligible for relief.

The record reflects that the Toyota Corolla at issue was not jointly owned by Mr. and Ms. Gali. In fact, the circuit court referenced that the fact that it was a “company car” in crafting its ruling. The court had no authority to grant the temporary use and possession of a car that was presumably titled in the name of the company¹⁶ to Ms. Gali under FL § 4-506(d)(10). Because the statute explicitly contemplates awarding the temporary use and

¹⁵ Further, Mr. Gali was already paying for an apartment for Ms. Gali in Falls Church, Virginia. The circuit court explicitly contemplated that Mr. Gali would apply the return of the security deposit for the Falls Church apartment to the security deposit for the new apartment.

¹⁶ The vehicle’s title itself is not in the record. The record is ambiguous as to whether Gali Service Industries, Mr. Gali’s S Corporation, or one of Mr. Gali’s parents’ companies actually own the car. In the transcripts during the three-day hearing, however, it was an undisputed fact that the car was a “company car.”

possession of a vehicle jointly owned by the parties, the court may not award the use and possession of a vehicle owned by another entity. Therefore, we vacate that part of the final protective order addressing the 2015 Toyota Corolla, and we affirm the judgments of the circuit court in all other respects. Because the monthly monetary award of maintenance was intended to address housing, food, and essentials for F.G. and I.G., but not transportation, we remand the case to the circuit court to modify the final protective order, if the court deems necessary, to address any transportation needs of Ms. Gali.

**JUDGMENTS OF THE CIRCUIT COURT
FOR MONTGOMERY COUNTY
AFFIRMED IN PART AND VACATED IN
PART. THAT PART OF THE FINAL
PROTECTIVE ORDER GRANTING
APPELLEE TEMPORARY USE OF THE
TOYOTA COROLLA VACATED;
JUDGMENTS AFFIRMED IN ALL OTHER
RESPECTS. CASE REMANDED TO THE
CIRCUIT COURT TO MODIFY THE
FINAL PROTECTIVE ORDER, IF
NECESSARY.**

COSTS TO BE PAID BY APPELLANT.