UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 0086

September Term, 2014

JOAO AMARAL

v.

ELIZABETH AMARAL

Meredith,
Reed,
Raker, Irma S.
(Retired, Specially Assigned),

JJ.

Opinion by Reed, J.
Dissenting Opinion by Raker, J.

Filed: December 17, 2015

The present appeal comes before us on the grant of a final protective order and the denial of a motion for a new trial. Elizabeth Amaral, appellee, sought and received a final protective order from the Circuit Court for Carroll County. That order was directed against her estranged husband, Joao Amaral, appellant here.

The circuit court's order directed Mr. Amaral to stay away from Ms. Amaral, made Ms. Amaral the primary custodial parent, and ordered that all visitation with his children be supervised pending fulfillment of certain conditions. Aggrieved by this order, Mr. Amaral sought both revision of the order and a new trial. The requested relief was denied by the circuit court, and Mr. Amaral subsequently sought our review.

Appellant raises four questions for our consideration in his brief. We consolidate those questions into three questions, and rephrase them for clarity as follows:[1]

[1] Appellant originally presented the following four questions in his brief:

I. Did the Court violate Appellant's due process right to cross examination when the judge threatened that Appellant was not going to be able to testify if cross examination of Appellee continued?

II. Was the court's finding of false imprisonment supported by the evidence when Appellee was not restrained or threatened but Appellant was standing in her car door but there was no evidence that he applied force to her or the vehicle or threatened her?

III. Was the court's finding of false imprisonment supported by the evidence when Appellee's testimony indicated that while Appellant was standing in her car door, she was not ready to leave because the children had not gotten in the car yet?

IV. Did the trial court err in denying Appellant's motion for a new trial when the issues set forth in paragraphs 1, 2, and 3 were clearly and directly raised in his motion for new trial?

I. Whether the circuit court violated appellant's due process right to cross-examination where it abridged his examination of appellee;

II. Whether the circuit court erred where it denied appellant's motion for a new trial on the basis his procedural due process rights were violated;

III. Whether the circuit court erred where it determined, by a finding of clear and convincing evidence, that appellant falsely imprisoned appellee.

As we shall explain, we answer all three questions in the negative. Accordingly, we affirm the judgment of the circuit court.

FACTUAL AND PROCEDURAL BACKGROUND

Appellant Joao Amaral, a citizen of Brazil, was married to appellee Elizabeth Amaral, a citizen of the United States. During the course of their marriage, they had two children, each of whom has dual citizenship.

The Amarals' marriage soured and Mr. Amaral went to Brazil for an eighteen-month to two-year period, purportedly to assist his father's farming operations in that county. In the protective order hearing, Ms. Amaral stated that, throughout their marriage, Mr. Amaral frequently displayed a violent temper when the two got into arguments. She explained that, during these arguments, Mr. Amaral often restricted or blocked her exit from a particular space. Around the time of Mr. Amaral's departure for Brazil, during a particular argument, he again attempted to restrict Ms. Amaral's movements and slapped her in the face. The impact caused her glasses to cut the side of her face.

Having grown weary of these arguments, Ms. Amaral told Mr. Amaral before he returned from his extended stay in Brazil that she would be seeking a divorce. When he

returned to the United States on March 20, 2013, he was served with Ms. Amaral's complaint for divorce. This set in motion the sequence of events between March 20 and March 28, 2013, that has culminated in this appeal.

On March 20, 2013, Mr. Amaral went to the family residence in order to see Ms. Amaral. She was not at the house at the time and would not acquiesce to Mr. Amaral's requests to come to the house alone. When he stated he wished to see the children, she told him that they would be at their softball practice that evening.

When Mr. Amaral arrived at the softball field, he found that Ms. Amaral was already there, sitting in her car in the adjacent parking lot and watching the practice. According to Ms. Amaral, the front of her car was against the curb, and there were cars on either side of her car. She contended that, despite the availability of numerous spaces in the lot that day, Mr. Amaral chose to park directly behind her car and effectively blocked her from exiting the parking space.

Six days later, on March 26, 2013, Ms. Amaral arranged for Mr. Amaral to see the children at a local public library. At the outset of that visit, Mr. Amaral sought immediately to speak with Ms. Amaral, who was seated on the other side of the library from where the children were. She refused to speak with him and explicitly told him he was there to spend time with the children, which he did for the rest of the visit. When the visit ended and Ms. Amaral was walking with the children back to their car, Mr. Amaral accompanied them and told Ms. Amaral he had a surprise for the children.

Ms. Amaral testified that as she and the children were getting into the car, Mr. Amaral stood in the doorway of the driver's door, preventing her from closing the door.

Because Mr. Amaral would not move from her doorway, she could not safely leave the parking space. He then moved to the passenger side door and, per Ms. Amaral's account, would not leave from that space. Growing anxious, she pleaded with him repeatedly to move from the doorway so she could leave. According to Mr. Amaral, however, he stood only on the passenger side of the vehicle, helping one of his daughters with her seatbelt.

Ms. Amaral further stated that, despite her requests, Mr. Amaral had not moved from the passenger doorway and the children were growing irritated because they had not received their surprise—candy bars. Although he eventually gave the children the candy bars, she testified that he nevertheless refused to move. This standoff led to the children becoming very upset. As the situation grew increasingly tense, Ms. Amaral finally threatened to call the police if Mr. Amaral refused to move. This threat appeared to compel Mr. Amaral and he closed the door, allowing her to leave.

The final incident in the sequence of events occurred on March 28, 2013, when Mr. Amaral appeared at the family residence unannounced. According to Ms. Amaral, she and Mr. Amaral had agreed that she would have sole possession of the house, making his unexpected visit a violation of their agreement. Mr. Amaral was particularly agitated on this day. Ms. Amaral testified that Mr. Amaral went up to the door of the house and slammed his hand against it; in his hand, he clutched a card from the Sherriff's office. Once again, Ms. Amaral threatened to call the police, but Mr. Amaral, defiant, challenged her to do so.

It was at this point, Ms. Amaral claimed, that Mr. Amaral began to exhibit unusual behavior. He was described as dancing and taunting Ms. Amaral from the driveway,

making unusual motions, and screaming the children's names. Ms. Amaral, growing fearful, called the police. In response, Officer Mario Devivio of the Carroll County Sherriff's Office came to the house and spoke with both Mr. and Ms. Amaral. Officer Devivio stated that when he arrived, he found Mr. Amaral calmly sitting at a table in the driveway, playing with a dog. Officer Devivio noted, at that time, Mr. Amaral was calm and cooperative, and explained that he wished to see his children. When the officer spoke with Ms. Amaral, he similarly stated she was calm. As Officer Devivio continued to assess the situation, however, he stated Ms. Amaral grew upset and began crying because she feared Mr. Amaral would take the children with him to Brazil.

On the day of the visit from Officer Devivio, Ms. Amaral sought a protective order from the District Court of Maryland for Carroll County. The court entered an interim protective order on an *ex parte* basis that day, and on March 29, 2013, entered a temporary protective order and transferred the case to the Circuit Court for Carroll County.

The circuit court held a hearing on the final protective order on April 22, 2013. The court heard testimony from the Amarals, as well as Officer Devivio. At the conclusion of the hearing, the circuit court made its findings and granted the final protective order. The court found that, as Mr. Amaral was a joint owner of the family home, he was entitled to go onto the property.

The court additionally found, however, that the incident at the library potentially constituted false imprisonment. The court stated that incident could amount to false imprisonment if it were to credit Ms. Amaral's testimony regarding Mr. Amaral's refusal to move from the doorway. Although it did not find Mr. Amaral falsely imprisoned Ms.

Amaral at the softball practice, the court indicated his actions there fit within his pattern of behavior during arguments. Ultimately, because of the testimony regarding that history of restricting Ms. Amaral's movements during arguments, the court found there were grounds for a finding of false imprisonment that would support the grant of a protective order.

On April 29, 2013, Mr. Amaral filed a motion, seeking to alter and amend the final protective order and also requesting a new trial. Mr. Amaral sought a liberalization of the visitation restrictions imposed by the circuit court. Additionally, he sought a new trial on the basis that the court violated his due process right to cross-examine fully Ms. Amaral, and also that insufficient evidence was presented to support a finding of false imprisonment. The circuit court denied the motion on March 19, 2014.

Mr. Amaral timely noted his appeal to this Court on March 25, 2014.

DISCUSSION

I. DEPRIVATION OF PROCEDURAL DUE PROCESS

A. Parties' Contentions

Mr. Amaral argues the circuit court violated his due process right to cross-examination. At the outset of the hearing on the final protective order, the circuit court explained to the parties that it would conclude the two matters before it that morning, which included the Amarals' hearing, by 12:30 p.m. During Ms. Amaral's cross-examination by Mr. Amaral's attorney, her counsel objected to a question. The following exchange occurred between the circuit court and Mr. Amaral's attorney:

> THE COURT: Counsel – [Ms. Amaral's Attorney], I understand your objection. I think I can sort this out, but the way we are going, I don't believe Mr. Amaral is going to get

> to testify, because we are – things are dragging, so any more questions for this witness?
>
> [MR. AMARAL'S ATTORNEY]: No, Your Honor. If that's my choice I'm going to call Mr. Amaral.
>
> THE COURT: All right. You can step down, [Ms. Amaral].

Mr. Amaral contends his attorney was establishing inconsistencies in Ms. Amaral's testimony before he was "abruptly cut off" by the court. Accordingly, this exchange constituted a violation of his due process right to cross-examination, and he cites a discussion of the Sixth Amendment right to confrontation in support of his argument.

Ms. Amaral simply responds by explaining that both parties were aware of the time constraints imposed by the circuit court on the proceedings. To that end, the court was acting within its discretion to manage the proceedings where it suggested to Mr. Amaral's counsel that he conclude his examination of Ms. Amaral.

B. Analysis

Mr. Amaral offers to this Court an argument grounded in the Sixth Amendment to the United States Constitution, stating the circuit court infringed upon his due process right to cross-examine Ms. Amaral, and he supports that argument with *Leeks v. State*, 110 Md. App. 543 (1996), a case which discusses the Sixth Amendment right to confrontation. We shall not consider this argument, however, because Mr. Amaral's counsel did not preserve this issue for our review.[2]

[2] Moreover, even if the issue were preserved, Mr. Amaral incorrectly asserted due process rights under the Sixth Amendment, as opposed to the Due Process Clause of the Fourteenth Amendment to the U.S. Constitution ("No State shall . . . deprive any person of life, liberty, or property, without due process of law . . . .") and Article 24 (continued…)

We have made clear in our prior opinions that "[w]hen a party has the option of objecting, his failure to do so is regarded as a waiver, estopping him from obtaining review of that point on appeal." *Geneva Enters., Inc. v. Harris*, 122 Md. App. 67, 76 (1998) (quoting *Fireman's Fund Ins. Co. v. Bragg*, 76 Md. App. 709, 719 (1988)); *see also Halloran v. Montgomery Cnty. Dept. of Pub. Works*, 185 Md. App. 171, 201 (2009) (quoting *Basoff v. State*, 208 Md. 643, 650 (1956): "When a party has the option either to object or not to object, his failure to exercise the option while it is still within the power of the trial court to correct the error is regarded as a waiver of it estopping him from obtaining a review of the point or question on appeal.").

When the trial judge asked Mr. Amaral's counsel if he had any further questions for Ms. Amaral, he had ample opportunity to object to the abridgment of his examination of Ms. Amaral. He did not do so and we believe that, by acquiescing to the trial court's request, he has waived his objection.

Geneva Enterprises is in accord. There, the appellee, on cross-appeal, argued the trial court erred when it refused her the opportunity to examine the dealership employee with whom she had a side repair deal regarding the details of his settlement with the dealership. *Geneva Enters.*, 122 Md. App. at 75. When the trial court considered, and

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of the Maryland Declaration of Rights ("That no man ought to be taken or imprisoned or disseized of his freehold, liberties or privileges, or outlawed, or exiled, or, in any manner, destroyed, or deprived of his life, liberty or property, but by the judgment of his peers, or by the Law of the land."). The Sixth Amendment would not apply in this case because, as the Amendment explicitly states, "In all *criminal prosecutions*, the accused shall enjoy the right . . . to be confronted with the witnesses against him . . . ." (emphasis added). U.S. CONST. amend. VI.

ultimately denied, appellee's request to examine that witness, appellee did not object and instead simply commended the trial judge for resolving a difficult issue. *Id.* at 75–76. We held that appellee had waived her right to argue this issue on appeal when she did not object to the trial court's ruling. *Id.* at 76.

Accordingly, because he did not object to the trial court's abridgment of his examination of Ms. Amaral, we hold Mr. Amaral has not preserved this issue for our review.

II. MOTION FOR NEW TRIAL

We next consider Mr. Amaral's argument that he is owed a new trial. He bases his assertion on the circuit court's purported denial of his procedural due process rights. To deny his request for a new trial, Mr. Amaral argues, constitutes an abuse of discretion. Ms. Amaral simply responds that the circuit court's denial of the motion was a proper exercise of its discretion because Mr. Amaral's due process right was not violated. We agree with Ms. Amaral.

We review a circuit court's denial of a motion for new trial under an abuse of discretion standard. *See Univ. of Md. Med. Sys. Corp. v. Gholston*, 203 Md. App. 321, 329 (2012) (citing *Miller v. State*, 380 Md. 1, 92 (2004) (Battaglia, J., dissenting)). Using this standard of review, and considering the discussion in § I, *supra*, we do not find that the circuit court abused its discretion where it denied Mr. Amaral's motion for new trial. Mr. Amaral received, and took advantage of, considerable due process protections, including the opportunity to cross-examine witnesses. Given how the examinations conducted by Mr. Amaral's counsel unfolded, we think that any grievance with the abbreviated cross-

examination lies not with the circuit court but with Mr. Amaral's counsel—particularly the failure to preserve that issue for review.

Mr. Amaral's procedural due process rights were provided to him and guarded carefully by the circuit court. We discern no abuse of discretion by that court and the motion for new trial on due process grounds was properly denied.

III. FALSE IMPRISONMENT

A. Parties' Contentions

Mr. Amaral's final contention is that the circuit court's finding he falsely imprisoned Ms. Amaral in the library parking lot was unsupported by the evidence and was, therefore, an error. He contends that the evidence presented does not support a required element of false imprisonment, which is that an individual must demonstrate that the confinement occurred by way of force, threat of force, or deception. Instead, he claims he was helping one of the children with her seat belt, which necessarily delayed Ms. Amaral's departure.

Ms. Amaral contends the evidence fully supports a finding of false imprisonment. First, she argues the evidence demonstrated Mr. Amaral confined her by standing in the doorways of the car. This left her with only two options: to either remain in the parking space, or to run over Mr. Amaral while her children watched. Second, she argues that her repeated and unheeded pleas to Mr. Amaral to take leave from the doorways, and her final threat to call the police, were evidence that she was held against her will. Last, she argues the evidence adequately demonstrates Mr. Amaral restrained her through a show of force that was non-violent. Any force element of false imprisonment—though, as discussed *infra*, not required—was satisfied by her apprehension of imminent bodily harm; an

apprehension derived from the prior incident where Mr. Amaral struck Ms. Amaral and her glasses cut her face.

B. Standard of Review

Prior to October 1, 2014, circuit courts were authorized to grant final protective orders after an adversarial hearing where the petitioner demonstrated by clear and convincing evidence that abuse had occurred. *Piper v. Layman*, 125 Md. App. 745, 754 (1999) (citing former Maryland Code (1984, 1991 Repl. Vol., 1998 Supp.), Family Law Article ("F.L.") § 4-506(c)(1)(ii)).[3] Under the present version of the Family Law Article, which was effective at the time of the hearing, false imprisonment is one of six acts constituting "abuse" for purposes of a final protective order. Md. Code (1999, 2012 Repl. Vol.), F.L. § 4-501(b)(1)(v).

Where conflicting evidence is presented, we accept the circuit court's factual findings unless they are clearly erroneous. *Piper*, 125 Md. App. at 754. We review the ultimate conclusion of the circuit court *de novo* by examining the applicable law and applying it to the facts of the case. *Id.*

C. Analysis

We discern from our review of the record that Ms. Amaral has adequately demonstrated that she was falsely imprisoned by Mr. Amaral in the library parking lot. With or without an adequate showing of force, Ms. Amaral has supported her contention

[3] F.L. § 4-506(c)(1)(ii) was amended by S.B. 333 on February 7, 2014. The amendment lowered the burden of proof required for a final protective order from a showing of clear and convincing evidence to a preponderance of the evidence. The amended version of the statute came into effect on October 1, 2014.

that she was falsely imprisoned and, accordingly, we think she has proved sufficiently that Mr. Amaral committed abuse within the meaning of F.L. § 4-501(b)(1). We hold the circuit court did not err in granting the final protective order.

In granting a protective order, the court must find that the respondent committed an act of "abuse," as defined by F.L. § 4-501. That section provides:

> "Abuse" means any of the following acts:
> (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.

F.L. § 4-501(b)(1).

False imprisonment is a common law tort. *State v. Dett*, 391 Md. 81, 92 (2006). Our case law shows, while perhaps not necessarily explicitly stated as such, that in addition to the common law version a separate, but related, "criminal-type" version of false imprisonment has emerged.

In the criminal-type, "[t]o obtain a *conviction* for false imprisonment, the *state* is required to prove: (1) that defendant confined or detained the victim; (2) that the victim was confined or detained against his or her will; and (3) that the confinement or detention was accomplished *by force, threat of force, or deception*." *Garcia-Perlera v. State*, 197 Md. App. 534, 558 (2011) (emphasis added) (citation omitted); *see also Jones-Harris v. State*, 179 Md. App. 72, 99 (2008). On the other hand, the Court of Appeals has stated that,

in the common law type, "[t]he elements of this tort are '1) the depravation of the liberty of another; 2) without consent; and 3) without legal justification.'" *Carter v. Aramark Sports & Entertainment Servs., Inc.*, 153 Md. App. 210, 249 (2003) (quoting *Heron v. Strader*, 361 Md. 258, 264 (2000)); *see also Manikhi v. Mass Transit Admin.*, 360 Md. 333, 365 (2000); *The Great Atl. & Pac. Tea Co. v. Paul*, 256 Md. 643, 654 (1970). The key difference, therefore, is that in the criminal-type version, the false imprisonment must have been accomplished through "force, threat of force, or deception," while in the common law type, the means are not necessarily so limited.[4]

Often times, however, the line between the two versions is blurred, especially when the role of force or threat of force is discussed in the common law type context. For example, in *Carter*, we wrote that "[t]he Court of Appeals reminds us that '[a]ny exercise of force, or threat of force, by which in fact the [tort victim] is deprived of [her] liberty . . . is an imprisonment,'" *Carter*, 153 Md. App. at 250 (quoting *Manikhi*, 360 Md. at 366), and indeed, that excerpt has persisted in common law type appeals. *See, e.g., Mason v. Wrightson*, 205 Md. 481, 487 (1954). The excerpted language, however, is better understood when taken in context. The language comes from a 1924 Court of Appeals case, wherein the Court said:

> False imprisonment is the unlawful restraint by one person of the physical liberty of another, and as here used the word "false" seems to be synonymous with unlawful.

[4] This distinction is further evidenced in the differences between the Maryland Criminal Pattern Jury Instructions ("MPJI-Cr") and the Maryland Civil Pattern Jury Instructions ("MPJI-Cv"). *Compare* MPJI-Cr. 4:13 (2nd Ed., 2013 Supp.) *with* MPJI-Cv 15:6(c) (4th Ed., 2013 Supp.).

> To constitute a case of false imprisonment there must be some direct restraint of the person; but to constitute imprisonment in such case confinement in jail or prison is not essential. Any exercise of force, or threat of force, by which in fact the other person is deprived of his liberty, compelled to remain where he does not wish to remain, or to go where he does not wish to go, is an imprisonment; *the essence of the tort consists in depriving the plaintiff of his liberty without lawful justification*, and the good or evil intention of the defendant does not excuse or create the tort. 11 R. C. L. 791. Or, as said by this court, *any deprivation by one person of the liberty of another without his consent*, whether by violence, threat *or otherwise*, *constitutes an imprisonment*, and if this is done unlawfully, it is false imprisonment, without regard to whether it is done with or without probable cause. Lewin v. Uzuber, 65 Md. 341, 4 Atl. 285; Bernheimer v. Becker, 102 Md. 254, 62 Atl. 526, 3 L. R. A. (N. S.) 221, 111 Am. St. Rep. 356; Fleisher v. Ensminger, 140 Md. 620, 118 Atl. 153.

Mahan v. Adam, 144 Md. 355, 365 (1924) (emphasis added). Clearly, the Court was not limiting the tort to those involving force or threats of force; rather, it was merely explaining that the elements of the tort were not limited to physically "imprisoning" the injured party, in the common usage of the term. Examining the excerpt in a more contemporary case may demonstrate how the line between the common law and criminal-type versions has become blurred when it comes to an element of force.

Manikhi involved a suit brought by a female employee against the Maryland Mass Transit Administration ("MTA") when she was allegedly sexually harassed by her coworker, Francisco Ovid ("Ovid"), over a number of years. *Manikhi*, 360 Md. at 340-41. Manikhi alleged, *inter alia*, that Ovid had, on numerous occasions, falsely imprisoned her by, among other things, locking the doors on the buses they were cleaning and demanding sex. *Id*. at 364. In front of the Court of Appeals, Ovid maintained that "only allegation is that [he] allegedly told her she could not 'get away' from him," and that that 'simple statement . . . does not equate . . . to the use of force or a threat of force.'" *Id*. at 365. Putting

his claim another way, Ovid's "asserted defect in Manikhi's complaint is that she was not restrained-she was free to go." *Id*.

In reversing the dismissal of her false imprisonment count, the Court of Appeals explained that, "[a]s a substantive matter, '[t]he necessary elements of a case for false imprisonment are a deprivation of the liberty of another without his consent and without legal justification.'" *Id*. (citations omitted). The Court held that Manikhi easily satisfied two of the elements, in that (1) she denied consent, and (2) they shared the same job title, so "one reasonably may infer that he did not possess legal authority for his actions." *Id*. The Court went on to dismiss Ovid's asserted defect in the final element, explaining that:

> Finally, Ovid's alleged actions-locking one of the bus doors, cutting off Manikhi's only other egress from that confined area by placing himself between her and the front door, turning out the lights of that confined area on a night shift, stating that she could not get away, and barraging her with lascivious puerilities-when taken together, constitute an implicit threat of force. Despite Ovid's assertion that Manikhi "provided no allegations . . . that she attempted to leave the bus," a legally sufficient claim of false imprisonment does not require that Manikhi have attempted to get past Ovid under these circumstances in order to discover whether his implicit threat of force would be exercised. *Instead, one may reasonably infer from Ovid's implicit threat that Manikhi's liberty was restrained*. *See Mason* [205 Md. at 487] . . . (noting that "'[a]ny exercise of force, or threat of force, by which in fact the other person is deprived of his liberty, compelled to remain where he does not wish to remain . . . is an imprisonment'" (quoting *Mahan* [144 Md. at 365. . .)).

Manikhi, 360 Md. at 365-66. Just like in *Mahan*, the Court in *Manikhi* was using an implied threat of force to explain that, while Manikhi was not physically "imprisoned" on the bus, Ovid's actions, taken as a whole, constituted a restraint of her liberty. Thus, the third element of the tort was satisfied. It is with this background we now turn to Ms. Amaral's case.

In a case such as this one, where the evidence is contested, we defer to the factual findings of the circuit court. *See Mid S. Bldg. Supply of Md., Inc. v. Guardian Door & Window, Inc.*, 156 Md. App. 445, 455 (2004) ("We do not evaluate conflicting evidence but assume the truth of all evidence, and inferences fairly deducible from it, tending to support the findings of the trial court, and, on that basis, simply inquire whether there is any evidence legally sufficient to support those findings." (citation omitted)). Examining the record, we discern no major errors in the circuit court's factual findings. The circuit court heard testimony from both Mr. and Ms. Amaral, as well as Officer Devivio, and each side was given ample opportunity to cross-examine the witnesses. There was a significant factual record built up during the course of this hearing. Accordingly, we think the evidence Ms. Amaral adduced does support a finding of false imprisonment at the library parking lot on March 26, 2013, by clear and convincing evidence.

In reviewing instances of "abuse" in the context of a protective order, the proper standard for a circuit court is "an individualized objective one—one that looks at the situation in the light of the circumstances as would be perceived by a reasonable person in the petitioner's position." *Katsenelenbogen v. Katsenelenbogen*, 365 Md. 122, 138 (2001). This is because "[a] person who has been subjected to the kind of abuse defined in § 4–501(b) may well be sensitive to non-verbal signals or code words that have proved threatening in the past to that victim but which someone else, not having that experience, would not perceive to be threatening." *Id*. at 139. Accordingly, here, in terms of the elements of false imprisonment, first, we think that a confinement did, in fact, occur at the

library parking lot on March 26, 2013. The library incident fits within a pattern of behavior displayed by Mr. Amaral.[5]

Throughout the record, Ms. Amaral recounted instances where Mr. Amaral would block or restrict her movement during an argument. She described a pattern throughout ten years of the marriage where Mr. Amaral often refused to let Ms. Amaral leave a room during an argument, whether it was by locking the door of the room or by shoving and pushing her back into the room if she attempted to leave. He would often corner her in the bedroom, and wildly gesticulate and scream at her during pitched arguments.

[5] The Court of Appeals has specifically held that prior instances of abuse are extremely relevant to a circuit court's decision in fashioning protective measures:

> The purpose of the final protective order hearing is to determine whether a final protective order should be issued, not solely to prove that a single act of abuse occurred. In determining whether to issue a protective order, the judge should consider not only evidence of the most recent incident of abuse, but prior incidents which may tend to show a pattern of abuse. Allegations of past abuse provide the court with additional evidence that may be relevant in assessing the seriousness of the abuse and determining appropriate remedies. . . .
>
> . . . [T]he statute appropriately gives discretion to the trial judge to choose from a wide variety of available remedies in order to determine what is appropriate and necessary according to the particular facts of that case. Evidence of prior incidents of abuse is therefore highly relevant both in assessing whether or not to issue a protective order and in determining what type of remedies are appropriate under the circumstances.
>
> We believe that excluding evidence of past abuse would violate the fundamental purpose of the statute, which is to prevent future abuse. The statute was not intended to be punitive. Its primary aim is to protect victims, not punish abusers. Whether a respondent has previously abused a petitioner is important and probative evidence in determining the appropriate remedies. . . .

Coburn v. Coburn, 342 Md. 244, 257-59 (1996) (citations omitted).

Her recollections of certain incidents comport with this pattern. For example, she testified that the incident, where Mr. Amaral struck her on her eyeglasses, occurred during a typical argument where her movement was restricted as she attempted to escape him. Additionally, despite the presence of several parking spaces at the children's softball practice on March 26, 2013, he purportedly parked his car right behind hers, and blocked her car in that space. We think the circuit court judge's recitation of this pattern was faithful to the testimony presented, and we are deferential to his findings.

In light of this background, we are persuaded Mr. Amaral did in fact intend to detain Ms. Amaral and impede her departure from the library. Ms. Amaral provided detail throughout the record, whereas Mr. Amaral gave rote denials.

Moreover, we are further persuaded this detention at the library occurred against her will. Both Mr. and Ms. Amaral described the incident at the library and each party stated that Ms. Amaral kept asking Mr. Amaral to let her leave—albeit for different reasons. Mr. Amaral's recollection of the incident has a seemingly innocent gauze to it—Ms. Amaral became upset because she was ready to depart and he had not finished securing their daughter's seat belt. Ms. Amaral's recollection, however, is much less rosy than Mr. Amaral's and fits in with the pattern of incidents described. Regardless, her repeated pleas to allow her to leave indicate she was kept there against her will. *See, e.g.*, *Street v. State*, 60 Md. App. 573, 581–82 (1984) (affirming sentence of taxi driver who willfully kept passenger locked in back seat of taxi during fare dispute despite her repeated entreaties to release her from taxi).

Moreover, even if the common law type false imprisonment required an element of force, we think Mr. Amaral did accomplish the false imprisonment, not by physical force, but by intimidation, *i.e.*, the threat of force. Mr. Amaral stood in Ms. Amaral's doorway—seemingly in silence—and did not remove himself until she threatened to call the police. If an individual feels compelled to remain where she does not wish to remain, that may imply the existence of a threat of force. *See Mason*, 205 Md. at 487. In addition, an aggressor's placement between the victim and the exit, such that egress is blocked may, along with additional threatening actions, constitutes a threat of force. *See Manikhi*, 360 Md. at 365 (as noted *supra*, determining that aggressor's placement of himself between the victim and the confined space's sole exit, when combined with other intimidating actions such as the aggressor's statement to the victim she could not get away and his "barraging her with lascivious puerilities," constituted an implicit threat of force).

Ms. Amaral certainly felt compelled to remain where she was because the alternative was running over Mr. Amaral in front of his children. Moreover, his actions at the doorway of the vehicle could constitute an implied threat of force when viewed along with that day's sequence of events, as well as the history of arguments between the Amarals. During the library visit, Mr. Amaral sat next to Ms. Amaral attempting to speak with her, a potentially intimidating action given the history of violence between the two parties. Similarly, his proximity to Ms. Amaral at the car and steadfast refusal to leave her doorway was an apparently distressing event. These actions, viewed in the broader context of the couple's history, square with the existence of an implied threat of force sufficient to sustain the trial court's finding of false imprisonment.

We think there was in fact clear and convincing evidence of Ms. Amaral's false imprisonment at the library. Accordingly, we hold the circuit court did not err in finding there was abuse that would sustain the grant of a final protective order.

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

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 0086

September Term, 2014

JOAO AMARAL

v.

ELIZABETH AMARAL

Meredith,
Reed,
Raker, Irma S.
(Retired, Specially Assigned),

JJ.

Dissenting Opinion by Raker, J.

Filed: December 17, 2015

I respectfully dissent. Appellant argues before this Court that he had no intent to confine appellee and that appellant exerted no force or threat of force to confine appellee. I would hold that the trial court erred in finding, by clear and convincing evidence, that appellee, Ms. Elizabeth Amaral, was entitled to a final protective order based upon appellant having falsely imprisoned appellee.[1]

The hearing court stated that the basis of the protective order was appellant's restriction of appellee's movement, and that "[c]learly restricting one's movement to the extent that one is falsely imprisoned is a form of abuse which is envisioned by the statute and can form the basis for granting a protective order." It appears that the court based the Order upon the incident at the library (and not the incident at the softball field).

I would vacate the Order because the underlying facts, taken in the light most favorable to appellant, do not constitute false imprisonment. Appellee was not restrained nor confined—she had reasonable means of egress. She was certainly not confined within a limited area. And there was no evidence before the hearing judge that appellant had the intent to confine appellee as that notion is understood in the context of false imprisonment, either the criminal variety or the common law tort.[2] The intentional tort does not include

[1]Even though the protective order expired on April 22, 2014, because of collateral consequences that appellant could suffer in the future as a result of the protective order, I do not find that the issue is moot.

[2]To me, it matters not whether the Fam. Law § 4-501 contemplates false imprisonment, criminal form or tort form. Under either case, appellee falls short of establishing by clear and convincing evidence the crime or tort. Moreover, if the statute contemplated the criminal offense, then the actor's intent to confine is beyond question.

negligence. In a legal sense, at best, what occurred at the library was a "transitory confinement" of appellee by appellant, and not an intentional one, and not false imprisonment, either criminal or in tort.

The Restatement (Second) of Torts, § 35 False Imprisonment, provides as follow:

> "(1) An actor is subject to liability to another for false imprisonment if
>
> > (a) he acts intending to confine the other or a third person within boundaries fixed by the actor, and
> >
> > (b) his act directly or indirectly results in such a confinement of the other, and
> >
> > (c) the other is conscious of the confinement or is harmed by it.
>
> (2) An act which is not done with the intention stated in Subsection (1, a) does not make the actor liable to the other for a merely transitory or otherwise harmless confinement, although the act involves an unreasonable risk of imposing it and therefore would be negligent or reckless if the risk threatened bodily harm."

The comment to the Restatement is helpful to understand the scope and application of the tort. Section h. of Comment on Subsection (2) addresses the "Extent of protection of interest in freedom from confinement." The section rejects "transitory confinement," explaining as follows:

> "Under this Section the actor is not liable unless his act is done for the purpose of imposing confinement upon the other, or with knowledge that such a confinement will, to a substantial certainty, result from it. . . . The mere dignitary interest in feeling free to choose one's own location and, therefore, in freedom from the realization that one's will to choose one's location is subordinated to the will of another is given legal protection only against invasion by acts done with the intention

> stated in Subsection (1, a) [intent to confine]. . . . So too, the actor whose conduct is negligent or reckless because of the risk which it involves to the other's bodily security or some more perfectly protected interest, is not subject to liability if his conduct causes nothing more than the imposition of a transitory and harmless confinement."

In Maryland, the tort of false imprisonment is defined as the "deprivation of the liberty of another without his consent and without legal justification." *Great Atl. & Pac. Tea Co. v. Paul*, 256 Md. 643, 654 (1970); *State v. Dett*, 391 Md. 81, 92 (2006). Other states have further explicated upon the elements, and are helpful to our analysis. For example, the Pennsylvania Supreme Court has further clarified the elements, citing favorably to the Restatement (2d) of Torts:

> "'False imprisonment . . . entails liability to an actor if (a) he acts intending to confine the other or a third person within boundaries fixed by the actor, and (b) his act directly or indirectly results in such a confinement of the other, and (c) the other is conscious of the confinement or is harmed by it.'"

Gagliardi v. Lynn, 285 A.2d 109, 111 n. 2 (Pa. 1971) (internal quotations marks omitted).

Appellee has not established the confinement element of false imprisonment. Although not a necessary element, appellant did not employ any physical force against appellee at the library incident. While a threat may constitute confinement, and therefore the lack of physical force does not defeat a claim of false-imprisonment, there is no evidence here that appellant threatened appellee. The past history of the parties cannot supply here the missing element of force or threat of force. Moreover, had she merely started the engine of the automobile, it is as likely appellant would have moved away as simply standing there requiring appellee to run him over. Not only was there no physical

force used, but appellee could have gotten out of the automobile, taken her children with her, and walked away.

Appellee has not established the intent element of false imprisonment. False imprisonment is not a strict liability offense, in tort or criminal law. The *mens rea* of the tort and crime is that of intent— that the actor intended to confine another. There was no evidence before the hearing court, at least not clear and convincing evidence, for the judge to conclude that appellant intended to confine appellee.

Appellant presented evidence that he was setting the seatbelt of the child seated in the rear of the car. Appellant testified as follows:

> "APPELLANT'S COUNSEL: Okay. As you were going out to the car, what happened?
>
> APPELLANT: The kids, we all walked to the car. She got in her seat. I went to the passenger side, my 10-year-old got in the front seat. My other daughter got in the backseat. I opened—the door was open, so I was trying to put her seatbelt, then she pulled the car in the gear and I told her to wait.
>
> APPELLANT'S COUNSEL: Who?
>
> APPELLANT: Elizabeth pulled the car in gear.
>
> APPELLANT'S COUNSEL: The Petitioner?
>
> APPELLANT: Yes.
>
> APPELLANT'S COUNSEL: She put the car in gear?
>
> APPELLANT: Yes. And I told her, wait, the belt is not buckled up yet. And she's like, oh, let me leave. Let me leave, you know, telling me to close the door and leave, and I told her to wait. And she got upset, so I closed the door, not even know if the seatbelt that was, you know, on my youngest daughter, and let her go.

> APPELLANT'S COUNSEL: So what was happening with the seatbelt that was causing some delay?
>
> APPELLANT: Well, the seatbelt doesn't—like you have to hold with both hands to go in. When you push with one hand the bottom part just sink into the chair, so I was helping her getting her belt.
>
> APPELLANT'S COUNSEL: Was your daughter trying to do it herself?
>
> APPELLANT: Yes.
>
> APPELLANT'S COUNSEL: Okay. And she didn't understand—
>
> APPELLANT: Right.
>
> APPELLANT'S COUNSEL: Okay. And how did you feel when your wife put the car in gear?
>
> APPELLANT: Well, I thought she was going to move the car, so I closed the door and, you know, let her go.
>
> APPELLANT'S COUNSEL: Okay. Did you restrain her in any way—
>
> APPELLANT: No.
>
> APPELLANT'S COUNSEL: —during this—
>
> APPELLANT: No, never. Never."

Appellee testified that she asked appellant to move away and close the door so she could leave. Appellant continued to fix the seat belt and then, did close the door, and appellee did leave with the children. There was no evidence presented that at that time at the library, appellant prevented appellee from leaving the automobile (with her children), without

interference if she chose to do so. While her freedom to drive away in her car was momentarily restricted, she was not confined nor imprisoned.

None of these facts support criminal or tortious false imprisonment. Accordingly, I would reverse the judgment of the Circuit Court for Carroll County and direct the court to vacate the protective order.