Circuit Court for Prince George's County
Case No. CADV21-07323

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 981

September Term, 2021

DARRYL ROACH

v.

AKELA V. MIMS

Wells, C.J.
Leahy,
Tang,

JJ.

Opinion by Tang, J.

Filed: July 21, 2022

This appeal stems from the entry of a final protective order by the Circuit Court for Prince George's County. The appellee, Akela V. Mims ("Mims"),[1] filed a petition for a domestic violence protective order ("petition") against the appellant, Darryl Roach ("Roach"). The District Court, sitting in Prince George's County, issued a temporary protective order and scheduled a final protective order hearing before the circuit court. Following a hearing on July 29, 2021,[2] the circuit court issued a final protective order after concluding that Roach placed Mims in fear of imminent serious bodily harm. Roach appeals from that order and presents a multipart question for our review, which we have condensed and rephrased[3] as follows:

> 1. Did the circuit court commit clear error in finding by a preponderance of the evidence that Roach committed an act of abuse by placing Mims in fear of imminent serious bodily harm?

[1] Mims did not file a brief in this Court.

[2] Both parties represented themselves at the hearing. Roach is represented by counsel in this appeal.

[3] The question as presented in Roach's brief is:

> Did the Trial Court commit clear [reversible] error finding that the Appellant committed an act of abuse placing the Appellee in reasonable fear of imminent serious bodily harm where (1) the only evidence offered in support of the finding was that the Appellant had threatened in a telephone conversation to "fuck up" the Appellee (2) there is no history of prior acts of abuse or violence between the parties (3) the alleged victim did not testify that the act complained of caused her fear of imminent serious bodily harm and (4) the Court failed to comply with Maryland Rule 2-522 and articulate on the record what findings of fact supported its legal conclusion that the alleged victim of abuse had an objectively reasonable fear of imminent and serious bodily harm under the standard set out in *Katsenelenbogen v. Katsenelenbogen*[,] 135 Md[.] App[.] 317 [(2000)?]

2. Did the circuit court sufficiently explain its reasons for granting the petition for protective order pursuant to Maryland Rule 2-522(a)?

For the reasons that follow, we shall affirm the judgment of the circuit court.

FACTUAL AND PROCEDURAL BACKGROUND[4]

The parties, unmarried, have two minor children in common. At some time prior to the filing of the petition, according to Mims, the parties agreed to a summer visitation schedule of "one week on, one week off" with the children. On or about July 7, 2021, two days after Roach exercised eight days of visitation with the children, Roach arrived unannounced at Mims's residence, called Mims, and said that he was there to pick up the children. Mims told Roach that the children were "not going with him" because it was "not his week."

Mims testified that Roach "proceeded to cuss [Mims] out" and threatened, "the next time he sees [her], that he was going to fuck [her] up." She insisted that Roach "did tell [her] he was going to put his hands on [her]." At the time, Mims was with a witness, who testified that she heard Roach over the speakerphone "pretty much threaten[]" that he was "pretty much going to fuck [Mims] up . . . when he see[s] her."

Mims recounted the threat against the backdrop of other visitation-related incidents. According to Mims, Roach exhibited "a pattern" of extracting the children from extracurricular activities when "he's not supposed to" and without informing Mims, leaving the children's whereabouts in question. Mims testified that Roach took the children

[4] The facts and procedural history are derived from the petition, the transcript of the final protective order hearing, and the final protective order entered by the court.

"from day-care on days he's not supposed to," causing Mims or her mother to "race[] in the evening to pick the kids up" and discover upon arrival, that "they're gone." Mims described an incident in April of 2021 when Roach "just took [the children] off the [football] field, didn't say anything to anybody. He didn't call [Mims] and tell [her] he was picking them up, and they're looking for [the children], and nobody knows where [the children] are." "[D]ays later or maybe a week or so" after Roach threatened Mims, Roach attempted to remove one of the children from the football field. When a coach and "a couple of parents" intervened, Roach left the field. Against that backdrop, Mims testified, "So—but his threat, that's what happened . . . and I don't know what [Roach's] state of mind is these days. With the [COVID-19] pandemic going on, I don't feel comfortable around him, and I told him that. I told him to stop texting me. I don't feel safe."

Roach denied cursing at Mims in early July. He explained that it was "his" day to have custody of the children, and "if you don't give me the kids on your day, I'm going to take them, you know?"[5] With respect to the April incident, Roach admitted that he picked up the children from practice, but disputed that Mims was unaware that he had done so.

At the conclusion of the hearing, the court ruled from the bench, stating:

> So I do find [Mims's] testimony to be credible. I find the testimony of the witness to be credible also, which means I find that you did commit an act of abuse against [Mims] and place[d] her in fear of imminent, serious bodily harm.

[5] In the transcript of the final protective order hearing, some of Roach's testimony is erroneously attributed to Mims. That inconsequential transcription error is apparent to us based on context.

The court issued a final protective order, which recited, in pertinent part:

> After the appearance of the following: respondent [and] petitioner and in consideration of the petition and evidence, the court makes/made the following findings.
>
> A. Akela Mims, who is a person(s) eligible for relief is: An individual who has child(ren) in common with respondent[]: Number of Children 2
> Ages 9 years old
>
> B. The petitioner is the person eligible for relief.
> Placed person eligible for relief in fear of imminent serious bodily harm.
> Threatened to "Fuck her up" next time he sees her

Roach filed a timely notice of appeal to this Court.[6]

STANDARD OF REVIEW

A final protective order petitioner must show "by a preponderance of the evidence that the alleged abuse has occurred[.]" Md. Code Ann., Fam. Law § 4-506(c)(1)(ii) (1984, Repl. Vol. 2019). "Abuse" in this context includes "an act that places a person eligible for relief in fear of imminent serious bodily harm." § 4-501(b)(1)(ii).

When reviewing the issuance of a final protective order, we accept the court's findings of fact unless they are clearly erroneous. *See* Md. Rule 8-131(c); *Barton v.*

[6] On the record, the court ordered that "for six months, [Roach is] not to abuse or threaten to abuse [Mims]," among other directives. The first page of the final protective order, however, states that "[t]he terms of order shall be effective through 7/29/22" (one year from the entry of the order). Roach did not raise this discrepancy on appeal, and we will not address it. We note it merely to observe that, to the extent that the final protective order has expired, the appeal might be perceived as moot. But as this Court explained in *Piper v. Layman*, "the expiration of the protective order does not automatically render the matter moot. The review of such finding on appeal, and the potential for vacation of the order, thereby removing the stigma, gives substance to the appeal." 125 Md. App. 745, 753 (1999) (cleaned up). Accordingly, we address the merits of Roach's arguments.

Hirshberg, 137 Md. App. 1, 21 (2001). We "must consider evidence produced at the trial in a light most favorable to the prevailing party and if substantial evidence was presented to support the trial court's determination, it is not clearly erroneous and cannot be disturbed." *Ryan v. Thurston*, 276 Md. 390, 392 (1975). "As to the ultimate conclusion, however, we must make our own independent appraisal by reviewing the law and applying it to the facts of the case." *Piper v. Layman*, 125 Md. App. 745, 754 (1999) (citations omitted).

DISCUSSION

I.

Roach argues that the court committed clear error in finding that he placed Mims in fear of imminent serious bodily harm. Specifically, Roach contends that "[a] single outburst made during a telephone conversation, without more evidence of hostility or past violence, is not legally sufficient to put an objectively reasonable person in [Mims's] position in reasonable fear of imminent serious bodily harm." For the reasons set forth below, we are not persuaded.

The Court of Appeals, in *Katsenelenbogen v. Katsenelenbogen*, articulated that the proper standard for deciding whether fear is reasonable under Family Law § 4-501(b)(1)(ii) "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[.]" 365 Md. 122, 138 (2001). "[B]elief as to imminent danger 'is necessarily founded upon the defendant's sensory and ideational perception of the situation that he or

she confronts, often shaded by knowledge or perceptions of ancillary or antecedent events.'" *Id*. at 139 (quoting *State v. Marr*, 362 Md. 467, 481 (2001)). The issue is "not whether those perceptions were right or wrong, but whether a reasonable person with that background could perceive the situation in the same way." *Katsenelenbogen*, 365 Md. at 139. The Court elaborated,

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

Id.

In the case before us, the court found that Roach "[t]hreatened to '[f]uck [Mims] up' next time he sees her" and the threat "place[d] her in fear of imminent serious bodily harm." The record supports the inference that the threat, contextualized with the surrounding incidents of Roach taking, or attempting to take, the children without Mims's knowledge, caused Mims to question Roach's "state of mind" and feel unsafe. The evidence was sufficient to support the conclusion that Mims's safety concern was reasonable under the individualized objective standard.[7]

[7] In reviewing a judgment of a trial court, "the appellate court will search the record for evidence to support the judgment and will sustain the judgment for a reason plainly appearing on the record whether or not the reason was expressly relied upon by the trial court." *Davidson v. Seneca Crossing Section II Homeowner's Ass'n, Inc.*, 187 Md. App. 601, 628 n.4 (2009) (quoting *United Steelworkers of Am. AFL-CIO, Loc. 2610 v. Bethlehem Steel Corp.*, 298 Md. 665, 679 (1984)).

Roach contends that Mims felt unsafe around Roach because of the pandemic and not his threat. Roach's interpretation of Mims's testimony, however, disregards the backdrop against which the threat was made, as explained above. Further, Mims's reason for feeling unsafe is elucidated by her sworn statement in the petition: "After [the threat,] I told him not to contact me anymore because I don't feel safe."[8] *See Mercedes-Benz of N. Am., Inc. v. Garten*, 94 Md. App. 547, 556 (1993) ("[W]e must assume the truth of all the evidence, and of all the favorable inferences fairly deducible therefrom, tending to support the factual conclusions of the lower court.").

Roach argues that he "has no prior history of violence any kind." In light of the parties' co-parenting relationship, Roach contends, "it stands to reason that the parties have had many disagreements over the course of their co-parenting relationship and those disagreements have likely included outbursts from both parties like the one at issue here. The fact that such outbursts have never been followed up with actual violence from [Roach] would lead a reasonable person in [Mims's] position to expect that this time would be no different." Roach's assertion about the parties' prior pattern of conduct in that regard, however, is unsupported by the record. *See Fladung v. State*, 4 Md. App. 664, 670 (1968) ("[S]uch speculation does not take the place of evidence in the case" and "the court cannot supply evidence that is lacking."). The court was entitled to conclude—based on the

[8] As noted in the final protective order, the court considered the petition in support of its finding that Roach placed Mims in fear of imminent serious bodily harm ("in consideration of *the petition* and evidence, the court makes/made the following findings.") (Emphasis added).

evidence presented—that Roach's threat, "shaded by [Mims's] knowledge or perceptions of ancillary or antecedent events" described by her at the hearing, placed Mims in fear of imminent serious bodily harm under the individualized objective standard. *See Katsenelenbogen*, 365 Md. at 139.

Finally, Roach argues that the parties were not in proximity at the time of his "outburst," and Mims did not indicate that she believed Roach would carry out his threat. Roach, however, conflates an "imminent" threat with an "immediate" one. The Court of Appeals dealt with this kind of issue in *Porter v. State*, involving whether a defendant who hired a third-party to kill her abusive husband presented sufficient evidence that she believed she was in "imminent" danger to be entitled to an imperfect self-defense jury instruction. 455 Md. 220, 226-27 (2017). The Court explained that there is a temporal distinction between "imminent" and "immediate." *Id*. at 245. "[A]n imminent threat is not dependent on its temporal proximity[.]" *Id*. A threat that occurred days and months earlier and without immediate confrontation can support a claim that one feared "imminent" harm. *See id*. at 241-45.

Although Roach encourages this Court to draw different inferences from the evidence, or in his view, the lack thereof, it is not our role to reweigh the evidence or make our own credibility determinations when reviewing the findings after a bench trial. *See Bricker v. Warch*, 152 Md. App. 119, 138 (2003). The court was entitled "to accept—or reject—*all, part,* or *none* of the testimony of any witness, whether that testimony was or was not contradicted or corroborated by any other evidence." *Omayaka v. Omayaka*, 417

Md. 643, 659 (2011) (emphasis in original). Viewing the evidence in the light most favorable to Mims, we conclude there was sufficient evidence for the court to find that Roach's conduct placed Mims in fear of imminent serious bodily harm.

II.

Maryland Rule 2-522(a) provides, "In a contested court trial, the judge, before or at the time judgment is entered, shall prepare and file *or* dictate into the record a *brief* statement of the reasons for the decision and the basis of determining any damages."[9] (Emphasis added). Roach argues that the court failed to comply with Rule 2-522(a) because it did not explain its reasons for weighing the credibility of witnesses in Mims's favor and concluding that Roach placed Mims in fear of imminent serious bodily harm.

Preliminarily, we observe that neither the domestic violence statute nor the Maryland Rules require a court to place specific or detailed findings on the record when it grants protective order relief pursuant to Family Law § 4-506(c)(1). *See* § 4-506(c)(1)(ii) ("[I]f the judge *finds* by a preponderance of the evidence that the alleged abuse has occurred . . . the judge may grant a final protective order to protect any person eligible for relief from abuse.") (Emphasis added); Md. Rule 9-307 (merely noting that "[o]nly a judge may issue

[9] Title 2 of the Rules "applies to civil matters in the circuit courts, except for Juvenile Causes under Title 11, Chapters 100, 200, 400, and 500 of these Rules and except as otherwise specifically provided or necessarily implied." Md. Rule 1-101(b). Rule 2-522(a) applies to a court "trial" "whether the case is legal or equitable in nature." Paul V. Niemeyer & Linda M. Schuett, *Maryland Rules Commentary*, 721 (5th ed. 2019) (citing *Kirchner v. Caughey*, 326 Md. 567, 573 (1992)). "Trial" is "[a] formal judicial examination of evidence and determination of legal claims in an adversary proceeding." *Black's Law Dictionary* (11th ed. 2019).

a final protective order" and "[f]inal protective orders are governed by Code, Family Law Article, §§ 4-505(d) and 4-506.")

In other contexts, not applicable here, the legislature explicitly requires a court to make specific or detailed findings of fact on the record. For instance, under the domestic violence statute, *mutual* final protective orders may only be issued "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." Fam. Law § 4-506(c)(3)(ii) (emphasis added). In the context of calculating child support in a family matter, the court is required to "*make a written finding or specific finding on the record* stating the reasons for departing from the [child support] guidelines." Fam. Law § 12-202(a)(2)(v) (emphasis added). In the context of a guardianship proceeding, the Rules require the court to "*make findings on the record* on the merits of a guardianship petition as provided" by certain sections of the Family Law Article. Md. Rule 9-109(a)(1) (emphasis added). In construing statutes and the Rules, we assume the legislature "meant what it said and said what it meant." *Witte v. Azarian*, 369 Md. 518, 525 (2002).

In the instant case, the court dictated into the record that Roach committed an act of abuse against Mims that placed her in fear of imminent serious bodily harm. The court also dictated into the record that it found the testimony of Mims and her witness credible. By finding the testimony of Mims and her witness credible, the court implicitly accepted their testimony. Although Roach insists that the court should have weighed the testimony expressly on the record, "[t]here is no requirement that the trial court recite, in its decision,

exactly the testimony of every party on every subject." *Green v. Taylor*, 142 Md. App. 44, 59 (2001).

Separately, the court prepared and filed into the record the final protective order, which explained that it considered "the petition and the evidence" in finding that Roach "threatened to '[f]uck [Mims] up' next time he sees her" and placed Mims in fear of imminent serious bodily harm. As noted earlier, there is no "requirement that [the court] make detailed findings on every fact in dispute." *Id*. The brief statement of reasons dictated in the record and set forth in the final protective order demonstrates that the court fulfilled its obligation under the Rule.[10]

JUDGMENT OF THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.

[10] Appellant cites to *Boswell v. Boswell*, 352 Md. 204 (1998), for the proposition that Rule 2-522(a) requires the trial court to (1) state an objective to be served by its decision, and (2) describe the facts that advance that objective. *Id*. at 223. At the outset, we observe that *Boswell* articulated the Rule in the context of the best interests analysis in custody and visitation matters. *Id.* (In determining custody or visitation, "a court is to consider [the best interests factors] and then make findings of fact in the record stating the particular reasons for its decision."). Regardless, the court in the instant case satisfied both components of the requirement. First, the language in the final protective order implicated the objective of protecting Mims from harm, which was also implicit in the proceeding itself. *See Coburn v. Coburn*, 342 Md. 244, 252 (1996) ("The purpose of the domestic abuse statute is to protect and 'aid victims of domestic abuse by providing an immediate and effective' remedy."). Second, the court described the fact that Roach threatened Mims. That factual finding supported the entry of the final protective order and advanced the objective of protecting Mims from harm.