

Circuit Court for Montgomery County
Case No. C-15-FM-23-809615

UNREPORTED
IN THE APPELLATE COURT
OF MARYLAND

No. 1110

September Term, 2023

JOHN SWANN

v.

STACYE HILL

Wells, C.J.,
Ripken,
Kenney, James A., III
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: February 6, 2024

*This is a per curiam opinion. Consistent with Rule 1-104, the opinion is not precedent within the rule of stare decisis nor may it be cited as persuasive authority.

John Swann, appellant, appeals from an order issued by the Circuit Court for Montgomery County granting a final protective order against him, and in favor of Stacye Hill, appellee. He raises two issues on appeal: (1) whether the evidence was sufficient to support the issuance of the protective order, and (2) whether the court erred in failing to take the parties’ pending divorce proceedings into consideration when granting the protective order.¹ For the reasons that follow, we shall affirm.

Appellant first contends that there was insufficient evidence to support the court’s decision to grant appellee a final protective order because she failed to demonstrate that he had placed her in fear of imminent serious bodily harm. In reviewing the issuance of a final protective order, we accept the circuit court’s findings of facts unless they are clearly erroneous. Maryland Rule 8-131(c); *Barton v. Hirshberg*, 137 Md. App. 1, 21 (2001). In doing so, we defer to the court’s determinations of credibility, as it has “the opportunity to gauge and observe the witnesses’ behavior and testimony during the [hearing].” *Barton*, 137 Md. App. at 21 (quoting *Ricker v. Ricker*, 114 Md. App. 583, 592 (1997)). In reviewing the circuit court’s ultimate decision to grant a final protective order, we independently apply the law to the particular facts of the case. *Piper v. Layman*, 125 Md. App. 745, 754 (1999).

¹ Appellant also raises additional issues in his reply brief, many of which are based on events that occurred after the protective order was issued. We do not, however, consider those issues on appeal. See *Strauss v. Strauss*, 101 Md. App. 490, 509 n.4, 647 (1994) (stating that “the scope of a reply brief is limited to the points raised in appellee’s brief, which, in turn, address[es] the issues originally raised by appellant. . . . A reply brief cannot be used as a tool to inject new arguments.”)

To be granted a final protective order, the party seeking the order must show “by a preponderance of the evidence that the alleged abuse has occurred[.]” Family Law Art. § 4-506(c)(1)(ii). The Family Law Article defines “abuse” expansively to include: acts that cause serious bodily harm or place a person in fear of imminent serious bodily harm; assault in any degree; rape or sexual offenses; attempted rape or sexual offenses; false imprisonment; stalking; or revenge porn. FL § 4-501(b).

Here, the court found that appellant abused appellee by assaulting her on two separate occasions, once by placing his hands around her neck and choking her for five seconds, causing her not to be able to breathe, and once by pushing her and causing her to hit her head against a closet door. And these findings of abuse were supported by appellee’s testimony, which the court determined to be credible, a determination we cannot say was clearly erroneous based on our review of the record.

Appellant nevertheless asserts that appellee failed to establish that she was actually in fear of him because she “admitted to a police officer [that responded to her 911 call] that she felt safe in the home with [him].” As an initial matter, this claim is based on video footage from the officer’s body-worn camera, which was not presented at trial and was not made a part of the record. Therefore, we will not consider this evidence for the first time on appeal. *See Barclay v. Briscoe*, 427 Md. 270, 282 (2012) (“[W]e review the trial court’s ruling on the law, considering the same material from the record, and deciding the same legal issues as the circuit court.” (quotation marks and citation omitted)). But in any event, the court found that appellant had committed an assault on appellee on two occasions by way of a completed battery. And because proof of an “assault in any degree” is sufficient

to establish abuse within the meaning of FL § 4-501(b), appellee was not required to also prove that she was also in fear of imminent serious bodily harm before the court could issue the protective order.

Appellant also contends that the court issued the protective order without considering the impact on the parties' pending divorce proceedings. In support of this claim, appellant primarily relies on *Katsenelenbogen v. Katsenelenbogen*, 365 Md. 122 (2001), which he asserts “upheld, in part, the [Appellate Court of Maryland] decision that Courts must consider the impact of granting protective orders rather than inducing the parties to address separation and divorce issues in a separate action.” However, the Court in *Katsenelenbogen*, actually held the opposite, stating that although issuance of a protective order may have consequences in subsequent litigation, “[t]hat is *not* the concern of the court[.]” *Id.* at 137. Rather, the concern is doing “what is reasonably necessary – *no more and no less* – to assure the safety and well-being of those entitled to relief.” *Id.* In other words, “once 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.” *Id.* at 136-37. We thus find no error in the court’s refusal to consider the parties’ divorce proceedings in granting the protective order.

Finally, appellant briefly notes that because of the protective order he was forced “to leave his home; he was given an abuser visitation schedule; and he was required to find new housing to support 6 children in 2 weeks.” However, Section 4-506(d) of the Family

Law Article provides that a final protective order may include multiple types of relief including ordering the respondent to vacate the home, awarding temporary custody of the parties' minor children, and establishing temporary visitation with the parties' minor children. Appellant has not demonstrated why the court's decision to grant that relief in this case constituted an abuse of discretion, especially in light of appellee's testimony regarding appellant's assaultive actions toward her while he was living in their marital home. Consequently, we shall affirm the judgment circuit court.

**JUDGMENT OF THE CIRCUIT
COURT FOR MONTGOMERY
COUNTY AFFIRMED. COSTS TO
BE PAID BY APPELLANT.**