Circuit Court for Montgomery County
Case No. C-15-FM-24-810269

UNREPORTED

IN THE APPELLATE COURT

OF MARYLAND

No. 1446

September Term, 2024

SCOTT A. COCHE'

v.

RAYNU CLARK

Shaw,
Ripken,
Meredith, Timothy E.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: April 2, 2025

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

Scott A. Coche', appellant, appeals from an order issued by the Circuit Court for Montgomery County granting a final protective order against him, and in favor of Raynu Clark, appellee. For the reasons that follow, we shall affirm.

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 assessing the credibility of the witnesses who testify at a final protective order hearing, the circuit court is "entitled to accept – or reject – *all*, *part*, or *none* of" their testimony, "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). It is "not our role, as an appellate court, to second-guess the trial judge's assessment of a witness's credibility." *Gizzo v. Gerstman*, 245 Md. App. 168, 203 (2020).

Following a hearing, the court entered a final protective order, finding that appellant had assaulted appellee by closing a garage door on her multiple times, despite her asking him repeatedly to stop. This finding was based on appellee's testimony to that effect, which the court found to be credible. On appeal, appellant first notes that the court found that he committed the assault by "a preponderance of the evidence" which meant that she "just barely got over the 50 percent[,]" whereas the State later dismissed a criminal assault charge against him arising from the same event. It is not entirely clear how appellant is

claiming the court erred in this regard. But in any event, we note that the court applied the correct standard in determining whether to issue the protective order. *See C.M. v. J.M.*, 258 Md. App. 40, 56-57 (2023) ("A judge may issue a final protective order if they find abuse by a preponderance of the evidence . . . [which] means more likely than not[.]" (internal quotation marks and citations omitted)). And the fact that appellant's assault charge was subsequently dismissed has no bearing as to the validity of the protective order as the standards of proof in criminal and civil trials are different. *See Att'y Grievance Comm'n of Md. v. Marcalus*, 414 Md. 501, 521 (2010) (discussing the difference of the standard of proof in a criminal and civil trial).

Next, appellant appears to take issue with the court's factual findings regarding the assault, asserting that appellee's claim was contradicted by "video evidence [that she] provided to the State's District Attorney" because "it directly shows [that she] purposefully walked under the closing overhead door and stood there." He also contends that the shoulder pain that appellee reported at her forensic evaluation following the incident was due to "her time serving in the Marine Corps" rather than from an assault. As an initial matter, the video referenced by appellant was not admitted as evidence in the protective order hearing. Therefore, we may not consider it on appeal. *See Cochran v. Griffith Energy Serv., Inc.*, 191 Md. App. 625, 663 (2010) (noting that "an appellate court must confine its review to the evidence actually before the trial court when it reached its decision"). Moreover, the issue of whether appellant's injuries were caused by the garage door or something else was a factual issue for the court to resolve. And the court ultimately found appellee's testimony in this regard to be believable. Based on our review of the record, we

cannot say that the court's credibility determinations with respect to appellee's testimony were clearly erroneous. Because that testimony, if believed, was sufficient to establish that appellant assaulted appellee by a preponderance of the evidence, the court did not err in issuing the protective order. Consequently, we shall affirm the judgment of the circuit court.

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