Circuit Court for Harford County
Case No. C-FM-19-809333

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1642

September Term, 2019

MICHAEL CHAVIRA

v.

ERIN TAYLOR

Kehoe,
Berger,
Reed,

JJ.

Opinion by Kehoe, J.

Filed: February 9, 2021

*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. *See* Md. Rule 1-104.

Michael Chavira appeals from a judgment of the Circuit Court for Harford County which granted Erin Taylor's petition for a protective order against him. He presents four issues, which we have reworded slightly:

> 1. Did the trial court err in granting Ms. Taylor's petition for protective order on the basis that Mr. Chavira's conduct constituted stalking under Md. Code Crim. Law § 3-802?
>
> 2. Did the trial court err in excluding evidence regarding the child custody case pending between the parties?
>
> 3. Did the trial court err in allowing Ms. Taylor to testify about facts not raised in her petition?
>
> 4. Did the trial court err in admitting hearsay evidence?[1]

None of Mr. Chavira's contentions are a basis for appellate relief and we will affirm the judgment of the circuit court.

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[1] Mr. Chavira's appeal raises the following issues:

1. Did the lower court err in granting the Petitioner's Petition for Protection on the basis that the Respondent's conduct constituted stalking under Section 3-802 of the Criminal Law Article of the Maryland Annotated Code?

2. Did the lower court err in prohibiting the Respondent from offering evidence regarding the custody case pending between the parties?

3. Did the lower court err in permitting the Petitioner to present testimony in support of allegations not raised in the Petitioner's Petition for Protection?

4. Did the lower court err in admitting hearsay evidence?

Background

Ms. Taylor and Mr. Chavira had a relationship for approximately four years and have a child in common. The parties had lived together for nine months in Arlington, Virginia before Ms. Taylor ended their relationship in April 2017. Ms. Taylor then moved to Harford County, Maryland. Following the birth of their child in 2017, Mr. Chavira moved to Harford County as well. They could not agree as to custody, and Mr. Chavira filed a civil action seeking joint legal and shared physical custody. At the times relevant to the case before us, this action was still pending and custody arrangements for the child were governed by a temporary custody order. Under the terms of the order, Ms. Taylor had primary physical custody, and Mr. Chavira had access with the child three days a week. Usually, the parties exchanged the child at Ms. Taylor's home. They often communicated with one another by text message and a number of these messages were entered into evidence.

In early June 2019, a neighbor told Ms. Taylor that Mr. Chavira had been sitting in a parked car in the cul-de-sac behind Ms. Taylor's home. On two occasions—June 16, 2019 and July 2, 2019—Ms. Taylor saw Mr. Chavira driving in her neighborhood even though there was no reason for him to be there to pick up or drop off the child. After the June 16 incident, Ms. Taylor texted Mr. Chavira that her neighbors had seen him in her neighborhood at times for no apparent reason and asked him for an explanation. Mr. Chavira was evasive, responding "No thank you." Ms. Taylor responded that his behavior

was "concerning and . . . creepy—so please stop." On July 2, Ms. Taylor saw him make a right turn into the cul-de-sac behind her house and told him it was "creepy" and to "please stop." Mr. Chavira responded that he had "every right to drive back there" and he just "drive[s] in and out." He testified at the hearing that he was in the neighborhood because he was building a house, specifically taking soil samples and pictures.

Another incident occurred on August 14, 2019. Mr. Chavira dropped off the child at Ms. Taylor's residence and about an hour later he texted Ms. Taylor stating that he had seen her car in the parking lot of a local restaurant and asked who was watching their child. This concerned Ms. Taylor because, although she was at the restaurant, her vehicle was parked in a location where it could not be seen from the street. She became concerned that Mr. Chavira was following her.

Eventually, Ms. Taylor came to suspect that Mr. Chavira was monitoring her location. Because of text messages and his presence in the neighborhood, she contacted her sister, a detective with the Baltimore County Police Department. Ms. Taylor's sister found a GPS tracking device attached to her car. Fearing for her safety, Ms. Taylor changed the locks on her home and installed security cameras. Mr. Chavira denied placing the tracking device on her car despite having contracted with a private investigator pursuant to the custody litigation.

In light of these events, Ms. Taylor filed a petition for protection from domestic violence on behalf of her and the child on the basis of stalking. The Circuit Court for

Harford County granted a temporary protective order to Ms. Taylor on August 23, 2019. After considering the evidence and arguments by counsel at the final protective order hearing, the court made the following relevant findings:

As to Mr. Chavira's presence in the neighborhood, his testimony that he was taking soil samples and pictures of his new home clearly contradicted his text message to Ms. Taylor that he "drives in and out" of the neighborhood. The neighbor's testimony about seeing Mr. Chavira parked behind Ms. Taylor's home further belied his claim of driving in and out, thereby undermining his credibility. The court, moreover, concluded if he had really been in the neighborhood to take soils samples he would have told her. Because he didn't, he either used it as an excuse to explain his presence or "he didn't want her to know." The court also noted that Ms. Taylor clearly expressed her concerns to Mr. Chavira, and rather than alleviate them by informing her he was building a house, Mr. Chavira was "immediately confrontational." Additionally, the court found it "extremely concerning that he would purchase property in that close proximity to hers." And the placement of the GPS tracking device took the case to "an entirely whole new level" and was used to "cause severe emotional distress."

Based on these findings, the trial court concluded that Ms. Taylor was a person eligible for a protective order and that Mr. Chavira had engaged in stalking her. The court granted a final protective order.

The Legal Landscape

Title 4, subtitle 5 of the Family Law Article sets out procedures by which individuals can obtain a court order protecting them against abuse by, among others, another individual who has a child in common with the petitioner. Fam. Law § 4-501(m). "Abuse" is a defined term in this statutory scheme and its meaning includes "stalking under § 3-802 of the Criminal Law Article." Fam. Law 4-501(b)(vi). In pertinent part, Crim. Law § 3-802 states:

> (a) In this section, "stalking" means a malicious course of conduct that includes approaching or pursuing another where:
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> (1) the person intends to place or knows or reasonably should have known the conduct would place another in reasonable fear [of various forms of physical injuries]; or
>
> (2) the person intends to cause or knows or reasonably should have known that the conduct would cause serious emotional distress to another.
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> (b) The provisions of this section do not apply to conduct that is:
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> • • •
>
> (2) performed to carry out a specific lawful commercial purpose[.]
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> • • •

In *Hackley v. State*, 389 Md. 387, 397 (2005), the Court of Appeals held that any malicious course of conduct intended to place another person in reasonable fear of serious bodily injury or death or that a third person likely will suffer such harm constitutes stalking. The court determined that "'includes'…was intended to be illustrative of the kinds of malicious conduct that could constitute stalking, and not to limit the crime to approaching or pursuing another person." *Id*. at 393. As to the standard for "reasonable fear" or "serious

emotional distress," we agree with Ms. Taylor that the "the proper standard 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).

The Standard of Review

The burden is on the petitioner to show "by a preponderance of the evidence that the abuse has occurred." Md. Code Ann., Fam. Law, § 4-506(c)(1)(ii). We have summarized the trial court's relevant factual findings. In cases tried before the court:

> the appellate court will review the case on both the law and the evidence. It will not set aside the judgment of the trial court on the evidence unless clearly erroneous, and will give due regard to the opportunity of the trial court to judge the credibility of the witnesses.

Md. Rule 8-131(c).

In reviewing for clear error,

> [t]he appellate court must consider evidence that 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. The trial court is not only the judge of a witness' credibility, but is also the judge of the weight to be attached to the evidence. It is thus plain that the appellate court should not substitute its judgment for that of the trial court on its findings of fact but will only determine whether those finds are clearly erroneous in light of the total evidence.

Ryan v. Thurston, 276 Md. 390, 392 (1975) (cleaned up). Another way of expressing this concept is that we look at the evidence in the light most favorable to Ms. Taylor because

she was the prevailing party in order to decide whether any rational trier of fact could have reached the trial court's conclusions.

Mootness

Before discussing the merits of the parties' contentions, we must deal with a preliminary matter. On September 12, 2020, the protective order expired. As a general rule, a case becomes moot "when the court can no longer fashion an effective remedy" to the parties. *D. L. v. Shepard Pratt Health System*, 465 Md. 339, 551–52 (2019). Technically this appeal became moot on the day that the protective order expired. But appellate courts will address the merits of an otherwise moot appeal when the prior judgment might have a lingering prejudicial effect. Protective orders fall into this category for the reasons explained in *Piper v. Layman*, 135 Md. App. 745, 753 (1999). We will address the merits of the parties' contentions.

Analysis

1.

Initially, Mr. Chavira argues that the trial court erred in granting the final protective order. He states that Mr. Taylor did not prove by a preponderance of the evidence that he engaged in stalking. His contentions are not persuasive.

We have previously summarized the approach that appellate courts take in deciding whether findings by a trial court are clearly erroneous. To that, we add that we "may not substitute our judgment for that of the fact finder even if we might have reached a different

result." *Gordon v. Gordon*, 174 Md. App. 583, 626 (2007) (cleaned up). The trial court concluded that Ms. Taylor and her neighbor were credible witnesses and Mr. Chavira was less credible. When, as in the present case, the court acts as the finder of fact, the trial judge is "entitled to accept—or reject—*all*, *part*, or *none* of the testimony of any witness, including testimony that was not contradicted by any other witness." *In re Gloria H*., 410 Md. 562, 577 (2009) (emphasis in original) (cleaned up). Ms. Taylor's testimony provided a legally sufficient basis for the trial court to conclude that Mr. Chavira engaged in stalking. In effect, Mr. Chavira is asking us to draw inferences from his, Ms. Taylor's, and the other witnesses' testimony that are different from those drawn by the trial court. But it is not our role to second-guess the trial court as long as its inferences were reasonable. And they were reasonable in this case.

2.

Mr. Chavira presents two arguments as to why the trial court erred in its assessment of the tracking device on Ms. Taylor's automobile.

First, he asserts that the device was placed on Ms. Taylor's vehicle without his authorization by Jared Stern, a private investigator whom he hired to obtain information about Ms. Taylor for the purposes of the parties' pending custody litigation. Stern testified that he routinely used GPS tracking devices in surveillance jobs and that, to his knowledge, the practice was legal. Mr. Chavira points out that this evidence was uncontroverted. But

trial courts need not believe evidence simply because it is unchallenged. In other words, the court wasn't obligated to credit Mr. Chavira's version of events on this issue.

Second, Mr. Chavira contends that the GPS device was placed on Ms. Taylor's vehicle "incident to Mr. Stern's lawful commercial purpose of conducting surveillance for clients," and was therefore exempted from Crim. Law § 3-802(b)'s definition of stalking. Because it wasn't stalking, he continues, then it couldn't be the basis for entry of a protective order. We are not persuaded. Mr. Chavira presents no authority for the proposition that private investigators have the legal right to install GPS tracking devices on vehicles without the owner's consent. In *Jones v. United States*, 565 U.S. 400, 404 (2012), the Supreme Court held that placing a GPS device on a vehicle without the owner's consent constitutes a trespass to chattels. Because Mr. Stern did not have permission from Ms. Taylor, he committed a tort when he placed the GPS device on her automobile. That doing so was not a violation of a criminal statute does not make it lawful. Moreover, if Mr. Chavira employed a tracking device to intrude into Ms. Taylor's private life for an improper purpose, specifically to stalk her, it doesn't matter that he employed a licensed private detective as an intermediary to actually plant the device.

3.

Mr. Chavira argues that the trial court erred by not allowing him to testify on matters related to the then-pending custody matter. Specifically, he asserts that he was not permitted to testify on Ms. Taylor's patterns of behavior in exchanging the child and

changes in those patterns. This is relevant, he says, because Ms. Taylor sought a protective order on behalf of their child. He asserts that this information is relevant because Ms. Taylor sought custody of the child as part of her relief. We disagree.

Relevant evidence is "evidence that has any tendency to make the existence of any fact of consequence to the determination of the action more probable or less probable than it would be without the evidence." Md. Rule 5-401. The trial court has no discretion to admit irrelevant evidence. *State v. Simms*, 420 Md. 705, 724-25 (2011). Thus, "*de novo* standard of review is applicable to the trial judge's conclusion of law that the evidence at issue is or is not of consequence to the determination of the action." *Id.* (cleaned up).

The evidence of *Ms. Taylor's* behavior regarding the custody arrangement is not relevant. That is, the evidence is not of consequence to a determination of whether *Mr. Chavira* was stalking her. Mr. Chavira has not proffered any explanation as to its relevance.

Mr. Chavira also asserts that the trial court denied him the opportunity to "explore this issue." After reviewing the trial record, we are satisfied that the trial court gave Mr. Chavira ample opportunities to explain the relevance of this evidence.

4.

Mr. Chavira's next contention is that the trial court improperly considered an allegation not raised in Ms. Taylor's petition for protection. Ms. Taylor testified, but did not include in her petition, that she believed someone had entered her home uninvited one night while she was sleeping. She suspected an intrusion after hearing the baby gate click and seeing

her bedroom door move. When Ms. Taylor began to explain why she thought that Mr. Chavira was the intruder, the trial judge interrupted her saying, “You’re going a little far [a]field” and instructed counsel to “Ask your next question.” Mr. Chavira claims that Ms. Taylor’s testimony about the alleged intrusion prejudiced him because Ms. Taylor did not include this allegation in her petition.

In *Coburn v. Coburn*, 342 Md. 244, 261 (1996), the Court found that the absence of allegations of prior instances of abuse in an *ex parte* petition “will not preclude a petitioner from introducing evidence of prior incidents of abuse absent clear prejudice to the respondent” in a protective order hearing. *Id.* While the Court noted the importance of notice to the respondent, it considered a requirement to “list every allegation of past abuse” in a *pro se* petition as “too onerous.” *Id.*

We do not think that the court erred when it permitted Ms. Taylor to testify that someone broke into her house. We also don’t think that the court erred when it prevented Ms. Taylor from speculating as to the identity of the intruder. For these reasons, we do not believe that Mr. Chavira was prejudiced by Ms. Taylor’s testimony about the incident. The court cut Ms. Taylor off when she veered into speculation that it was Mr. Chavira who entered her home on the night in question. It also appears from the record that the court did not consider this testimony when making its findings. Ultimately, Mr. Chavira has not convinced us that he was materially prejudiced by the introduction of this evidence not included in Ms. Taylor’s petition.

5.

Finally, Mr. Chavira asserts the trial court erred in admitting hearsay evidence. He asserts that the court erred in permitting Ms. Taylor to testify that "concerned others" brought to her attention that Mr. Chavira was sitting in the cul-de-sac behind her home. During the trial, Mr. Chavira objected to the testimony and was overruled. He states in his brief that the testimony was offered to prove the truth of the matter asserted—that he in fact had been sitting behind Ms. Taylor's home. Thus, he reasons, the testimony was inadmissible. We do not agree.

Hearsay is "a statement, other than by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted." Md. Rule 5-801. Hearsay is not admissible unless otherwise provided by the Maryland Rules of Evidence. Md. Rule 5-802. Whether the evidence is hearsay is a legal question reviewed de novo by appellate courts. *Gordon v. State*, 431 Md. 527 (2013).

Although the record is not entirely clear as to why Ms. Taylor was asked about her neighbor's statements, the evidence in question could only have been introduced for one of two reasons: First, to prove that Mr. Chavira was hanging around in the cul-de-sac behind Ms. Taylor's house. Second, to explain why Ms. Taylor became concerned about Mr. Chavira's behavior. To this Court, Ms. Taylor asserts that it was offered for the latter purpose. Our review of the trial record as a whole supports this. However, assuming for purposes of analysis that the evidence was offered for the truth of the matter asserted rather

than to explain how Ms. Taylor's became concerned about Mr. Chavira's behavior, any suppositional error was harmless.

The reason for this is the out-of-court declarant, namely, Ms. Taylor's neighbor, herself testified that she saw Mr. Chavira parked behind Ms. Taylor's home on several occasions and that she eventually informed Ms. Taylor. This testimony was certainly relevant and was admitted without objection. So, even if the court erred in permitting Ms. Taylor to testify as to what the neighbor had told her (and the court didn't), the neighbor's testimony about what she saw and what she told Ms. Taylor cured the problem. *See Jones v. State*, 310 Md. 569, 588-89 (1987) ("Where competent evidence of a matter is received, no prejudice is sustained where other objected-to evidence of the same matter is also received."). Also, of course, Mr. Chavira admitted in his own testimony that he had been visiting the cul-de-sac but was doing so because he was thinking about building a house on an adjacent lot.

For these reasons, we affirm the judgment of the circuit court.

THE JUDGMENT OF THE CIRCUIT COURT FOR HARFORD COUNTY IS AFFIRMED. APPELLANT TO PAY COSTS.