UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1177

September Term, 2016

ROBERT BERINGER

v.

MIYUKI BERINGER

Berger,
Reed,
Salmon, James P.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Salmon, J.

Filed: July 19, 2017

The Circuit Court for Montgomery County, Maryland, on April 29, 2016, entered a final protective order in favor of Miyuki Beringer ("Mrs. Beringer") and against Robert Beringer ("Mr. Beringer"). In granting the final protective order, the circuit court found that Mrs. Beringer had "met her burden of showing that [Mr. Beringer] placed her in fear of imminent harm." On May 9, 2016, Mr. Beringer filed a pleading titled: "Motion for New Trial or to Alter or Amend Under Rule 2-534, *et al.*" That motion was denied on July 7, 2016. Mr. Beringer then noted this timely appeal, in which he raises two questions:

1. Did the court err in making a finding of domestic violence without providing counsel an opportunity to make closing statements, argument or summation?
2. Did the court err in finding an episode of domestic violence based on the *de minimis* conduct of Robert Beringer, i.e., that he allegedly raised his hand and his voice?

We shall hold that the first question is not preserved for appellate review. In regard to the second question, we shall hold that the judge did not err inasmuch as there was substantial evidence to support the trial judge's finding that Mr. Beringer was guilty of domestic violence.

I.

EVIDENCE PRESENTED AT THE HEARING BY APPELLEE

A. Testimony of Miyuki Beringer.

The parties were married in 2001; three children were born of that marriage: R J., age 14, E. B., age 12 and E. B.s twin sister, S.[1] In the year prior to the April 29, 2016 hearing, Mrs. Beringer had lived at the marital home located at 1001 Lewis Avenue,

[1] The ages of the children as listed above are their ages as of April 29, 2016.

Rockville, Maryland with her three children. In the previous year, however, Mr. Beringer had resided at that home only "10 to 14 days."

On Thursday, March 4, 2016, Mr. Beringer unexpectedly showed up at the marital home. He was accompanied by Yvonne Persinger, whom Mr. Beringer introduced as his "fiancée." On that Thursday, Mr. Beringer simply dropped several items off for the children and then left the marital home.

At approximately 7:00 PM, on Friday, March 5, 2016, Mrs. Beringer returned from work and found Mr. Beringer and Ms. Persinger in the marital home. Mrs. Beringer asked Ms. Persinger to leave but the latter refused to do so. To make matters worse, Mrs. Beringer was told that her husband and his fiancée were planning to stay in the basement of the marital home. Mrs. Beringer, believing that this was not a "very healthy situation" for her or the children, left the marital home along with the three children, and stayed at a hotel for the weekend.

At approximately 7:00 p.m. on Sunday, March 7, 2016, Mrs. Beringer and her children returned to the marital home and found that Mr. Beringer and Ms. Persinger were not present. Approximately three hours later, Mr. Beringer and Ms. Persinger unexpectedly returned to the residence. Using her phone, Mrs. Beringer immediately attempted to take photos of Mr. Beringer and his fiancée,[2] but Ms. Persinger grabbed the cell phone from Mrs. Beringer and gave it to Mr. Beringer.

[2] Evidently, the pictures were taken by Mrs. Beringer because she thought that the photos might help her prove that her husband was having an adulterous relationship with Ms. Persinger.

Mr. Beringer proceeded to inspect the text messages stored in the phone and also looked at messages she had placed on Facebook. As a result of that inspection, Mr. Beringer learned that Mrs. Beringer had sold (at a pawn shop) many items of personal property that had previously been in the marital home. Mrs. Beringer explained to her husband that she had sold the items in order to pay the electric bill for the marital home. Mr. Beringer then told his wife, in the presence of their three children, that if he reported the sale of property to the police, Mrs. Beringer would go to jail for 10 years. Next, directing his remarks to the three children, he said that the situation presented "two options." The first option was that he could call the police, who would come to the house and jail Mrs. Beringer. The second option was not to contact the police, but in exchange, Mrs. Beringer would have to leave the house immediately.

Mrs. Beringer replied that the children had school the next day and that they should not make any decision at this point, but should go to bed. Mr. Beringer told the children that they had to decide immediately and the children said that they did not want their mother to go to jail. Then, according to Mrs. Beringer, the children said to her, "[M]ommy you won't be safe here you should leave the house." At approximately 1:00 a.m., on Monday, March 8, 2016, Mrs. Beringer left the marital home, drove away in her car, parked the vehicle and then attempted to sleep in her vehicle. At about 2:00 a.m., because she was "really freezing" and because she wanted to get the battery for her back-up cell phone, which was needed because her regular cell phone had been taken away from her, she reentered the marital home. When she entered the house, Mr. Beringer said, "I told you not to come back." She ignored this statement and went to her bedroom to get the battery

for her cell phone. As she did so, Mr. Beringer "chased [her] around" the house telling her to "get out." When she approached the front door, Mr. Beringer raised his hand as if he intended to hit her.

In regard to the alleged threat to injure her, the following colloquy is relevant:

> Q. And what if anything happened when you got back in the house?
>
> A. My husband said, I told you not to come back. And he chased me around saying, get out. I felt that he was going to hit me so I left the house.
>
> Q. Why did you think he was going to hit you?
>
> A. Because I saw his hand raise, so I thought he was going to hit me.
>
> Q. Had he ever hit you before?
>
> A. Yes.
>
> Q. How many times if you know?
>
> A. Too many times. I don't know how many times exactly, but many times.
>
> Q. But did you, I mean could you hear the tone of his voice when you came back in the house?
>
> A. His tone was threatening to intimidate me and to make me feel afraid.

Mrs. Beringer left the marital home and drove to a police station, arriving there at about 4:00 a.m. After she explained the situation to a police officer, an officer escorted her back to her home, which she again entered. Within approximately thirty minutes of her arrival, Mr. Beringer left the marital home but not before telling his wife that he was "going to get [her] out of the house."

Mr. Beringer then went to the District Court of Maryland for Montgomery County and obtained a Temporary Protective Order against Mrs. Beringer. But, on March 15, 2016, the District Court denied Mr. Beringer's petition for a final protective order against his wife.

Also, on March 15, 2016, Mrs. Beringer filed for the protective order that is the subject of this appeal.

B. Testimony of Kathleen Herndon.

Kathleen Herndon, a neighbor of Mr. and Mrs. Beringer, testified that she had previously seen Mr. Beringer physically assault Mrs. Beringer. More specifically, she testified that on December 24, 2008, she saw a fight between the parties; during that fight Mr. Beringer pulled Mrs. Beringer's hair, "yanked her head back and slugged her." According to Ms. Herndon, the incident she witnessed was "very violent . . . very scary" inasmuch as Mr. Beringer hit his wife "right in the face."

II.

APPELLANT'S MOTION TO DISMISS

At the conclusion of Mrs. Beringer's case, counsel for Mr. Beringer made an oral motion to dismiss the petition for a protective order pursuant to Md. Rule 4-501. The ground for the motion was that Mrs. Beringer (allegedly) had failed to prove that Mr. Beringer had committed an act that placed a person eligible for relief "in fear of imminent seriously bodily harm, assault, rape, false imprisonment or stalking." Counsel for Mr. Beringer argued that at worst, his client "apparently raised his hand and told his wife to get

out. She was about three feet away according to her pantomime. He never went to strike her. He just raised his hand." The motion was denied.

III.

EVIDENCE PRODUCED BY APPELLANT

A. Testimony of Yvonne Persinger.

Yvonne Persinger, a resident of Kansas City, Missouri, accompanied Mr. Beringer to the marital home on Thursday, March 4, 2016. That evening she and Mr. Beringer stayed briefly at the house and slept overnight at a hotel.

Ms. Persinger and Mr. Beringer returned to the marital home on Friday, March 5, 2016. Mrs. Beringer, showing her displeasure at the presence of Ms. Persinger, went around the house turning off all of the lights, even in rooms where people were present. Because the house was dark, the children walked around the house using flashlights. According to Ms. Persinger, she and Mr. Beringer would go into a room to talk but Mrs. Beringer would enter the room and turn the lights off. Eventually, Mrs. Beringer left the marital home accompanied by her children. Ms. Persinger and Mr. Beringer stayed at the marital home over the weekend but Mrs. Beringer came back to the marital home on Sunday evening accompanied by her (Mrs. Beringer's) three children.

After Mrs. Beringer entered the house, she began taking pictures of Ms. Persinger by "sticking her phone in my (Ms. Persinger's) face." The third or fourth time Mrs. Beringer did this, Ms. Persinger took the phone from Mrs. Beringer and gave it to Mr. Beringer.

At approximately 12:30 a.m., March 7, 2016, Ms. Persinger was in the living room of the marital home when she witnessed an argument between Mr. and Mrs. Beringer. Mrs. Beringer said that she didn't think that she should have to leave the marital home. Nevertheless, Mrs. Beringer finally left the home even though she did not have a bag packed. Thirty-five to forty-five minutes after Mrs. Beringer left, she returned. According to Ms. Persinger, after Mrs. Beringer's return "there was no altercation or anything" between Mrs. Beringer and her husband. All that occurred was that Mr. Beringer told his wife "that she needed to leave because of what she had done." Mr. Beringer also reminded his wife that he had tried to get her to leave the marital home on many prior occasions but she had refused. Finally, Mr. Beringer said to his wife "I would like you to go," and that he would help her "get a place." Once again, Mrs. Beringer said "no, I don't have to leave" and then went into "her" (Mrs. Beringer's) room. Ms. Persinger then left to go to the bathroom. When she came out of the bathroom, the three children, Mrs. Beringer and Mr. Beringer were all in the living room. During the entire episode, Ms. Persinger never saw Mr. Beringer raise his arm and never made any threatening gestures toward his wife. Instead, "he was being very kind, actually." In fact, Mr. Beringer never even raised his voice and neither did Mrs. Beringer. The two were "being argumentative" and Mrs. Beringer "was kind of being unstable" but she didn't "yell or anything." Next, Mrs. Beringer left the marital home, got into her car, and drove off. Thereafter, Mrs. Beringer returned with police officers. In her presence, Mrs. Beringer never told the police officers that Mr. Beringer assaulted her; instead, all she said was that Mr. Beringer was "trying to kick her out of the house and she had a right to be there."

B. Testimony of Appellant, Robert J. Beringer.

Mr. Beringer testified that on March 4, 2016, a Thursday, he went to the marital home to give his children some presents and to give them "kisses on the forehead." His fiancée, Yvonne, stayed in the car on that occasion. When he entered the house, Mrs. Beringer commenced turning off all of the lights. She acted "frantic" and "crazy." Next, she commenced pushing him, whereupon he put his hands up in defense and said "please leave me alone, let me go see my kids and tell them that I love them." After being in the house for approximately five minutes, he left and went to a motel with Yvonne Persinger.

The next night, Mr. Beringer came back to the marital home. He intended to go downstairs to the basement in order to fix it up so that it could be rented. At approximately 1:00 a.m., March 7, 2016, Mrs. Beringer "went upstairs and forcibly removed all three children from the house." She took them to a hotel and made the children stay there. At the point when Mrs. Beringer left, Mr. Beringer and Ms. Persinger did not know whether Mrs. Beringer "was ever going to come back."

On Sunday evening, he and Ms. Persinger, along with his six-year-old son (from another relationship) went out to a restaurant and returned to the marital home at approximately 7:00 p.m. When they returned, Mrs. Beringer was present along with the three children. Everyone went into the kitchen, whereupon Mrs. Beringer "jammed" her cell phone into Ms. Persinger's face. After Mr. Beringer told her to please don't do that, Mrs. Beringer once again jammed the phone in Ms. Persinger's face. Ms. Persinger reacted by snatching the phone from Mrs. Beringer and then tossing it to Mr. Beringer. Mr. Beringer looked through information that was on the cell phone and discovered that Mrs.

Beringer had "stole[n]" $35,000 "worth of gear." At that point Mr. Beringer gave his children five options, *viz*.: 1) stay with Mrs. Beringer; 2) stay with Mr. Beringer; 3) move from the marital house and "get a new house;" 4) go live on a farm; or 5) travel with Mr. Beringer and be educated by a tutor. After that conversation, Mrs. Beringer left the marital home between 1:00 and 2:00 a.m. The children helped Mrs. Beringer pack; they then kissed her and she left in her car.

At approximately 2:30 a.m. (March 8, 2017), Mrs. Beringer returned. She just walked into the marital home while Mr. Beringer was talking to his sister on the phone. The reappearance of Mrs. Beringer was a shock to Mr. Beringer. He stood up and walked toward the entryway and said to Mrs. Beringer: "[W]hat's going on here?" Mrs. Beringer, who at that point was about 15 feet away, said that she was just going to use the bathroom and she then went upstairs. He did not follow her.

Mrs. Beringer was upstairs for approximately five or ten minutes and then she came downstairs. At that point, Mr. Beringer was still sitting in a chair in the living room. Mr. Beringer did not stand up and Mrs. Beringer left, voluntarily. After Mrs. Beringer left, she stayed in her car for approximately thirty minutes and then drove away. Later that night, she came back, this time accompanied by two police officers.

He added that he never did anything "intimidating" to his wife. From the time she came back into the house to use the bathroom, the closest he came to her was between 15 and 17 feet. And, at no time did he do anything to put his wife in fear. In fact, in the eighteen years the two had lived together, he always provided for her and "never raised my hand to her one time."

IV.

POST EVIDENTIARY PROCEEDINGS

After all evidence had been presented, the following exchange occurred:

THE COURT: Any other witnesses? Anything else?

[Counsel for Mr. Beringer]: Oh, I'm sorry. No, Your Honor.

THE COURT: Okay. Anything else from you?

[Counsel for Mrs. Beringer]: No, ma'am.

* * *

[Counsel for Mrs. Beringer]: Well, I mean except for, Yes. We have more on family maintenance and all that.

THE COURT: I understand that but anything else with respect to the protective order itself?

[Counsel for Mrs. Beringer]: No, ma'am. Petitioner rests.

The judge then gave the following oral ruling:

Okay. Based on the testimony presented I find that the petitioner has met her burden of showing that the respondent placed her in fear of imminent harm. Her testimony was supported by Kathy Herndon, who had no reason to lie, that in the past she had seen the respondent strike the petitioner. So, therefore there's a basis for the petitioner to believe that he would do it again. And actually the testimony of Yvonne really kind of supported it, because Yvonne testified that the respondent kept telling the petitioner she needed to leave. He tried to get her to leave several times. He said, I'll help you leave. So, to me that supports that he raised his hand to get her to leave. So the protective order is granted.

Now with respect to any family maintenance or anything like that we're going to take a break now. I've got a criminal case. We'll reconvene at 3 o'clock and then you can put on evidence with respect to that to the extent that you can reach an agreement with respect to whatever you're going to requesting you can do that. But we'll reconvene at 3 o'clock.

V.

DISCUSSION

A. First Issue Presented.

Mr. Beringer argues that "the court erred in making a finding of domestic violence without providing counsel an opportunity to make closing statements, argument, or summation." Mr. Beringer supports that contention by a three-page quote from *Spence v. State*, 296 Md. 416, 419-21 (1983), concerning the importance of closing argument. In addition to citing the *Spence* case, Mr. Beringer also cites *Donaldson v. State*, 416 Md. 467, 487-88 (2010) and *Whack v. State*, 433 Md. 728, 742 (2013) for the proposition that in a criminal case, a defendant has an absolute right to make a closing argument.

Mr. Beringer also argues:

> An elimination of that right [to make closing argument], as occurred below, is necessarily reversible error. It is essential that a fact-finder maintain an open mind through hearing all the evidence and closing statements. Where that essential principle has been violated, as here, the ruling must be reversed, and any remand must be to a different trial judge.

Mrs. Beringer points out, preliminarily, that all the cases relied upon by Mr. Beringer that concern the right to make a closing statement are criminal cases. According to appellee, this is an important distinction because here the trial judge was determining whether Mrs. Beringer was entitled to a final protective order. Such proceedings are civil in nature, not criminal, and are authorized by Md. Code (2012 Repl. Vol.) Family Law Article § 4-506. This Court, in *Fritts v. Fritts*, 11 Md. App. 195, 199 (1971) said:

> The great weight of authority is that in a non-jury civil case the refusal of the trial court to allow a litigant's counsel to argue the case is not prejudicial error. [38 A.L.R.2d] § 5 [h] at 1431-1436; see Later Case Service thereto at

> 763-764. Many of the decisions are based upon the theory that in a trial before the court without a jury, argument of counsel is a privilege, not a right, which is accorded the parties by the trial court in its discretion. This reliance on the discretion of the judge is in accord with the view of the role of the trial judge in this jurisdiction. In *State v. Hutchinson*, 260 Md. 227 [(1970)], the Court of Appeals noted "the professional expertise, experience, and judicial temperament with which our legal system has inherently invested a trial judge *vis a vis* a jury composed of laymen." It said: "It is true that judges, being flesh and blood are subject to the same emotions and human frailties as affect other members of the specie[s]; however, by his legal training, traditional approach to problems, and the very state of the art of his profession, he must early learn to perceive, distinguish and interpret the nuances of the law which are its 'warp and woof.'" We believe that argument by counsel upon submission of a civil case tried without a jury is a matter within the discretion of the trial court. We find no abuse of discretion in the circumstances here.

(Footnote omitted.)

A more recent case concerning the right to make a closing argument in a civil case is *In re Emileigh F.*, 353 Md. 30, 41-42 (1999) where the Court said:

> As we have indicated, several states have held that there is a right to closing argument in civil cases as well as criminal ones. For example, the Supreme Court of North Dakota held in *Fuhrman v. Fuhrman*, 254 N.W.2d 97, 101 (1977), that "litigants in civil nonjury cases (and, of course, in all criminal and jury cases as well) have a right to have their attorneys make a final argument." The court qualified this absolute right, as we did in [*State v.*] Brown [324 Md. 532 (1991)], noting that this right "may be limited as to content so as to preclude improper argument ..." *Id.* In *Aladdin Oil Burner Corp.* [*v. Morton*], 187 A. [] 350 [(NJ. Supp. 1936)], the Supreme Court of New Jersey held that in a contract matter, the trial court's denial of the right to closing argument arbitrarily denied the litigant an absolute right to present to the trier of fact an analysis of the evidence and the inferences to be deduced therefrom.
>
> We now hold that litigants in a CINA proceeding ordinarily have a right, based on nonconstitutional Maryland common law, to have an opportunity to make closing argument. Although our holding is grounded in nonconstitutional law, the Supreme Court's rationale in *Herring* [*v. New York*], 422 U.S. [853,] 863, 95 S.Ct. at 2556 [(1975)], is equally applicable:

> Some cases may appear to the trial judge to be simple—open and shut—at the close of the evidence. And surely in many such cases a closing argument will, in the words of Mr. Justice Jackson, be 'likely to leave [a] judge just where it found him.' But just as surely, there will be cases where closing argument may correct a premature misjudgment and avoid an otherwise erroneous verdict. And there is no certain way for a trial judge to identify accurately which cases these will be, until the judge has heard the closing summation of counsel.

(Alteration in original)(footnotes omitted). Among other benefits of argument, counsel's remarks may highlight portions of the testimony considered most favorable or significant, point out inferences to be drawn from the evidence, or explain seemingly irrelevant testimony. The court may limit this right as to content so as to prevent improper argument, and to impose reasonable time limits, but may not deny the right altogether. We have noted that the right to be heard by counsel exists "however simple, clear, unimpeached, and conclusive the evidence may seem, unless [counsel] has waived his right to such argument...." *Yopps v. State*, 228 Md. 204, 207, 178 A.2d 879, 881 (1962).

In a CINA dispositional proceeding, the juvenile court has the power to commit a child to the custody or under the guardianship of the Department of Juvenile Justice, a local department of social services, the Department of Health and Mental Hygiene, or a public or licensed private agency where the child is to be accommodated until custody or guardianship is terminated with approval of the court. [Md. Code, Courts and Judicial Proceedings] § 3-820(c)(1)(ii). An indigent, custodial parent or guardian of the child alleged to be in need of assistance is entitled to the assistance of counsel if the proceeding is under § 3-820. *See* § 3-821. The right to a hearing under these circumstances means more than simply listening to the examination of witnesses. It includes the arguments of counsel, or, if the party is unrepresented, of the party.

In CINA cases involving a dispositional review hearing, the issues are very often fact-intensive. This is true in the instant case. Although the right to present argument may be limited, it should not have been totally denied. Counsel should have been permitted to present argument to the court. Accordingly, the trial court abused its discretion in totally denying Petitioner the opportunity for closing argument.

The holding in the case of *In Re Emileigh F.* was narrow, *viz.*: litigants in a CINA case ordinarily have a nonconstitutional right to make a closing argument in non-jury trials. *Id.* at 41. A CINA case is civil, but the *Emileigh F.* Court did not say that litigants in all civil non-jury cases have a right to make a closing argument; instead, the Court, impliedly at least, left that issue open. Nevertheless, for purposes of this appeal, we will assume, *arguendo*, that appellant's counsel had a right to make a closing argument. Such a right, however, can be waived. *Id.* The question then becomes whether counsel for Mr. Beringer waived that right by failing to voice any objection to the court's conduct, either at the end of the evidentiary phase of the hearing regarding the protective order or during the afternoon session that same day when the judge considered custody, visitation, use and possession of the marital home and other issues.

The first time appellant complained about the failure to allow closing argument was when his counsel, ten days after the hearing, filed a post-trial motion asserting that "[t]he proceedings of April 29, 2016 was in derogation of [d]efendant's procedural and constitutional rights in that the ruling was made before hearing closing statements of counsel."

Mrs. Beringer argues that Mr. Beringer waived his right to contend that his counsel was entitled to make a closing statement because, at the April 29, 2016 hearing, counsel for Mr. Beringer never gave any indication that he wished to make a closing argument. Moreover, when appellant filed his brief in this Court, he never mentioned the preservation issue.

In regard to the preservation issue, the case *sub judice* is distinguishable from *In Re Emileigh F.*, because in the *Emileigh F.* case counsel for one of the parties asked for an opportunity to make closing argument but the trial judge said: "I'm not going to let you all argue. I've heard enough." 353 Md. at 36. The Court of Appeals said that under such circumstances it was not necessary for petitioner's counsel to specifically ask for the right to make a closing argument because it "'was apparent that [the] ruling on further objection would be unfavorable'" to petitioner and under such circumstances the absence of further objection by the petitioner did not constitute a waiver. *Id.* at 36-37 (quoting *Johnson v. State*, 325 Md. 511, 515 (1992)). In regard to the issue of preservation, the court in the *Emileigh F.* case concluded:

> The court could hardly have permitted Petitioner closing argument and have denied the other parties the same opportunity. Under these circumstances, Petitioner did not waive her right to closing argument by her failure to interpose an objection.

Id. at 38.

In the case *sub judice* it is not at all clear, that at the conclusion of the evidence, counsel for Mr. Beringer wished to make further argument, inasmuch as counsel, when he made his motion for judgment at the conclusion of Mrs. Beringer's case, fully explained why, in counsel's view, Mrs. Beringer had failed to meet her burden of proof. It is important to note that neither counsel asked the trial judge for the right to make closing argument even though both had an opportunity to do so when, immediately prior to making her oral ruling, the trial judge asked: "Anything else?" By remaining silent at that point

and by failing to object at any time before the judge finished her oral opinion, we hold that Mr. Beringer's counsel waived his right to make a closing argument.

We turn next to the trial judge's denial of appellant's post-trial motions. Md. Rule 8-131(a) provides that, except for jurisdictional issues, an appellant court ordinarily "will not decide any other issue unless it plainly appears by the record to have been raised in or decided by the trial court[.]" The purpose of this rule is to bring issues to the trial judge's attention so that the judge will have an opportunity to correct mistakes before harm occurs.

Ten days after the trial judge had ruled on the question of whether Mrs. Beringer was entitled to a final protective order, Mr. Beringer, by counsel, did file a "Motion for New Trial or to Alter or Amend [judgment] under Rule 2-534, *et al.*" In paragraph six of that pleading, counsel for Mr. Beringer, without citing any authority, made the following assertion: "[t]he proceeding of April 29, 2016 was in derogation of [d]efendant's procedural and constitutional rights in that the ruling was made before hearing closing statements of counsel." Mr. Beringer did not have a "constitutional" right to have counsel make a closing argument in a civil action. *See In Re Emileigh F.*, 353 Md. at 41. Any such right, if it exists, would have to be based on "nonconstitutional Maryland common law." *Id*.

In his brief, Mr. Beringer does not make it clear whether the "error" that he claims was committed by the court occurred on April 29, 2016, or at a later date when the trial judge denied his post-trial motions. If he contends that the "error" occurred at the April 29, 2016 hearing, the argument is waived for the reasons already stated. If appellant contends that the "error" occurred by denying the post-trial motion, the standard of review

is whether the court abused its discretion. *See I.O.A. Leasing Corporation v. Merle Thomas Corporation*, 260 Md. 243, 249 (1971) (concerning motion for new trial) and *Steinhoff v. Sommerfelt*, 144 Md. App. 463, 484 (2002) (dealing with Rule 2-534 - Motion to Alter or Amend Judgment). As the Honorable Charles E. Moylan, Jr. said for this Court in *Steinhoff*, a trial judge's discretion to deny a post-trial motion is very broad, *viz.*:

> With respect to the denial of a Motion to Alter or Amend, if that should be what is before us, the discretion of the trial judge is more than broad; it is virtually without limit. What is, in effect, a post-trial motion to reconsider is not a time machine in which to travel back to a recently concluded trial in order to try the case better with hindsight. The trial judge has boundless discretion not to indulge this all-too-natural desire to raise issues after the fact that could have been raised earlier but were not or to make objections after the fact that could have been earlier but were not. Losers do not enjoy *carte blanche*, through post-trial motions, to replay the game as a matter of right.
>
> Even assuming, *arguendo*, the appealability of the denial of a post-trial motion, the appellant would carry a far heavier appellate burden on that issue than he would carry in challenging the denial of a more timely motion for relief made during the course of trial. Appellate consideration of a denial of a motion to reconsider, or some similar post-trial revisiting of already decided issues, does not subsume the merits of a timely motion made during the trial.
>
> That a party, *arguendo*, should have prevailed on the merits at trial by no means implies that he should similarly prevail on a post-trial motion to reconsider the merits. A decision on the merits, for instance, might be clearly right or wrong. A decision not to revisit the merits is broadly discretionary. The appellant's burden in the latter case is overlaid with an additional layer of persuasion. Above and beyond arguing the intrinsic merits of an issue, he must also make a strong case for why a judge, having once decided the merits, should in his broad discretion deign to revisit them.

Id. at 484-85.

If Mr. Beringer is contending that the trial judge abused her discretion in denying his post-trial motion on the grounds that his counsel was denied the right to make a closing

argument, we reject that contention. For starters, if either counsel had asked to make a closing statement at trial, there is a substantial likelihood that the trial judge would have allowed one. We will never know. But to wait until ten days after trial to make the first complaint concerning the right to make a closing argument, is patently unfair to the appellee. The trial judge's denial of the post-trial motions did not constitute an abuse of discretion.[3]

B. <u>Second Issue Presented</u>.

Mr. Beringer argues that the trial court erred "in finding an episode of domestic violence based on the *de minimis* conduct of Robert Beringer, i.e., that he allegedly raised his hand and his voice."

The trial judge granted the final protective order on the grounds that Mr. Beringer, in contravention of Family Law Article § 4-501(b)(1)(ii) committed, "an act that places a person eligible for relief in fear of imminent serious bodily harm."

Appellant makes the following argument:

> At the hearing below, Miyuki Beringer testified that Robert Beringer raised his hand while he was three feet away (Robert said he was fifteen feet away), and that she was afraid he would call the police and "put her in jail" as he was threatening. There was no indication that Robert Beringer made a fist or any type of threatening gesture. The President-elect raises his hand(s) every time he gives a speech, yet no one suggests this creates an imminent fear of serious bodily harm. The testimony and evidence was plainly insufficient to support a finding of abuse under the domestic violence statute.

(References to record extract omitted.)

[3] In his brief, counsel for appellant puts forth no argument concerning the issue as to whether the trial judge abused her discretion in denying the motion for a new trial.

The trial judge's findings of fact were fully supported by the evidence. As will be seen, Mrs. Beringer said that her husband, when she returned to the house on March 8, 2016, chased her around the house telling her to get out. According to Mrs. Beringer, when he told her this, her husband's tone was "threatening" and used "to intimidate [her] and to make [her] feel afraid." When Mr. Beringer raised his hand, she feared that "he was going to hit [her]." This fear was, from Mrs. Beringer's point of view, reasonable because in the past he had struck her "many times," and, as Ms. Herndon testified, on at least one prior occasion, Mr. Beringer's assault on his wife was "very violent . . . very scary." Moreover, as the trial judge found, because of the aforementioned threatening gesture, which, according to Mrs. Beringer, was made when the parties were only about three feet apart, Mrs. Beringer ran back outside in very cold weather to take shelter in her vehicle. As can be seen, contrary to appellant's argument, there was ample evidence, if believed, that Mr. Beringer did make a threatening gesture toward his wife.

Appellant's argument that his gesture was not threatening because Donald Trump raises his "hand(s) every time he gives a speech" and yet no one could plausibly contend that this gesture creates fear of imminent bodily harm is frivolous. Quite obviously, the fact that a public speaker raises his hand or hands during his speech, in and of itself, would put no one in fear. But, when a husband with a past history of spousal abuse chases his wife around the marital home after telling her to leave in a "threatening" tone of voice and then raises his hand as if he was going to hit his spouse, the wife's fear of imminent serious bodily harm is quite natural.

The trial judge, as was her prerogative, believed the testimony of Mrs. Beringer and her next door neighbor, Ms. Herndon, and disbelieved Mr. Beringer's version of events. Taking the evidence, as we must, in the light most favorable to Mrs. Beringer, there was sufficient evidence to find that Mr. Beringer's conduct put his spouse in fear of imminent serious bodily harm. Therefore, the trial judge did not err in granting Mrs. Beringer a final protective order.

JUDGMENT AFFIRMED; COSTS TO BE PAID BY APPELLANT.