Circuit Court for Prince George's County
Case No. CADV-18-00028

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2586

September Term, 2017

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SCOTT DAVENPORT

v.

JULIE DAVENPORT

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Meredith,
Shaw Geter,
Raker, Irma S.
(Senior Judge, Specially Assigned,)

JJ.

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Opinion by Shaw Geter, J.

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Filed: August 27, 2019

After an evidentiary hearing, the Circuit Court for Prince George's County issued a final protective order prohibiting Scott Davenport, appellant, from contacting or entering either the residence or the workplace of his estranged wife, appellee Julie Davenport, for a period of one year from January 29, 2018. Appellant, representing himself both in the circuit court and this Court, presents the following questions for our review:

1. Was the trial court's decision to grant the FINAL PROTECTIVE ORDER legally correct based on the evidence which showed both (1) a lack of fear on the part of the appellee and (2) the absence of abuse on the part of Appellant?

2. Was the trial court's decision to grant the FINAL PROTECTIVE ORDER legally correct based on the evidence, which demonstrates that the Appellee did know that the Appellant might reasonably come to her house, and that she had approved of the same?

3. Was the trial court's decision to grant the FINAL PROTECTIVE ORDER legally correct even though the abuse finding was only in reference to events that occurred well over one (1) year prior to the filing for protection, when the Maryland Family Law Article § 4-506 (j) only allows protective orders up to one (1) year in duration?

4. Was the trial court's decision to grant the FINAL PROTECTIVE ORDER legally correct when it treated the Appellant as if he were subject to a PROTECTIVE ORDER where no such order existed?

Because appellant is mistaken about both the applicable law and the facts established by the evidentiary record, we shall affirm the order.

## BACKGROUND

This appeal stems challenges a final protective order issued while the Davenports were in the process of divorcing. Appellant and appellee are parents to six children, ranging in ages from nine to 18 at the time of this hearing. After appellee "fled from the home on March 11th, 2016," the Davenports have been living apart. By consent, a six-month Protective Order was granted on September 2, 2016, requiring appellant not to contact appellee except through counsel, and to stay away from her residence and workplace. After that protective order expired on March 2, 2017, "[t]he very next morning" appellant "showed up at [appellee's] workplace with flowers[.]"

Thereafter, appellee encountered appellant while grocery shopping at Aldi. According to appellee, appellant "kind of followed [her] around" and then "followed [her] out to the parking lot trying to talk to [her], even though [she] had told him that I didn't want to talk to him."

During "the Anne Arundel County fair he did the same thing to [appellee] and [the] children [in her care]." Appellee "was extremely unnerved by his presence and asked him to leave [them] alone and he refused." Instead, "[h]e kept following [her] around and . . . looking back [she] should have called the Police, but [she] was afraid and . . . didn't."

On January 5, 2018, appellee filed this petition for a protective order. Of the five minor children, only sixteen-year-old Nathan was living with appellant, and the others were living with appellee. Appellee alleged that appellant's actions between December 23, 2017, and January 4, 2018, put her in fear for her personal safety.

At that time, appellee was living with the children at an address that appellant had not visited. The consent protective order had expired in March 2017. Under a pendente lite custody and visitation arrangement, however, appellant "could only see the children in public at the Bowie Town Center every other weekend from 10 to 4 on Saturday and Sunday[.]"

On the morning of December 24, 2017, appellee awoke to find "a basketball hoop laying in [her] yard" with "a note from [appellant] saying that he had left it there for the children." Until then, appellee "didn't even know that he necessarily knew where [she] lived[.]" Appellee explained that she "had tried to meet him . . . always at neutral locations and so it was unsettling to [her] that he had showed up in the middle of the night." Appellee "contacted [her] lawyer and told her about it[.]"

On the evening of December 26, appellee returned home with her children after they had been visiting friends and family, to find "the basketball hoop had been set up out in the street[.]" She "felt uncomfortable again by the fact that [appellant] had showed up at [her] house while [she] was not there."

On December 29, which was the youngest child's ninth birthday, appellee and the birthday boy were "out for breakfast" when appellee "got texts and calls from [her] children saying dad is here[.]" Appellant "left Nathan at the house, so he was gone by the time" appellee arrived home.

Later that afternoon, when appellant returned to pick up Nathan, appellee spoke to appellant as he "was going out to his car[,]" telling him she was "very uncomfortable with

[him] coming here without prior arrangement" and that she was "going to call the Police if [he] show[ed] up here again." Appellant replied, "fine, call the Police."

On January 4, 2018, it was the eleventh birthday of another child, and school had been canceled for snow. Appellant "showed up again." Although "[h]e stayed out in the car originally out in the street[,]" "he sent Nathan to the door." When appellee and all the children in the household "came to the door," Nathan asked, "does anyone want to come play out in the snow with . . . dad and myself[.]" "[T]hey all said no." "[A] few minutes later [appellee] observed them sledding down the hill . . . in the community area behind" their house, about "100 yards" away where she and the children "could see them clearly[.]"

Later, appellant, seeing they were home, "came to the front door and started ringing the doorbell repeatedly, calling out." Appellee "called the Police and the Bowie Police did arrive and he left shortly after they arrived." The next day, appellee obtain an interim protective order.

At the January 29, 2018, hearing on appellee's petition for a final protective order, both appellant and appellee testified. The court considered testimony regarding the events during that period, as well as evidence about earlier incidents that provided context for appellee's reaction to appellant's behavior during the period identified in the petition.

After appellee recounted the events summarized above, she testified that "throughout [their] marriage," appellant "was extremely domineering." "[H]e believed that [appellee] needed to have sex with him whenever he wanted to because that was my role as a wife and that that's what the Bible teaches." Appellant "hurt [her] sexually for

the first time when [they] were living in South America as missionaries[,]" in 2013, by "penetrat[ing] her very roughly with his fingers to the point where [she] had chaffing and bleeding and he acknowledged that he did it on purpose." Although appellee "considered going for help to somebody else on [their] mission team[,]" she "was afraid of what he would do, so [she] didn't say anything."

In September 2015, appellant "was upset" when appellee "bought some football cards for [their] sons[.]" Appellee "apologized, but he was just extremely upset with [her]." Appellee recounted the following incident and its aftermath, including the escalating physical and verbal abuse over the ensuing months:

> He broke a plate in my presence and called me a, you know, names, was yelling and upset and then he grabbed my arm and was shaking me and I tried to pull away, he wouldn't let me go.
>
> So I slapped his face and ran and he chased after me and grabbed me and it left bruises on my arm. That was the first time that had happened. . . .
>
> And then, "throughout the Fall of that year and into the Winter there were various times where he restrained [appellee] from leaving the room, you know, he cut up my clothes in front of me, he smashed my son's cell phone with a stapler, he threatened me verbally, your life as you know it is coming to an end, I'm going to take the children away from you, you know, things of that nature.
>
> And then I left once in January after a terrible night where he accosted me verbally for hours and, and I was finally just pleading and hysterical, don't take the children from me and he said that's more like it and then proceeded to have sex with me. And honestly, . . . I was too exhausted and afraid to do anything about it. . . .
>
> The night . . . just described . . . was the night of January 15th, because I left on January 16th with all my children and went to go stay with a friend.

> Some leaders in our church who I had been seeking help from spoke to my husband and he kind of said he was sorry for being angry and that it wouldn't happen again and so they suggested that I should return to the home, so I did.

Appellee clarified that these were separate incidents that occurred "at various times" and "would happen usually late in the night many times each week that he would wake me up and berate me and so these various things that were said." The threat to take the children "happened on December 21st, . . . right before Christmas" of 2015. On January 15, 2016, that was "the instance where he restrained" her and "threw [her] clothes all around the room and told [her] to get out of the house[.]" When appellee then tried "to go in the bathroom to get away[,]" appellant "put his foot in the door and various other things." Appellee "was trying to call someone for help and . . . couldn't get to [her] phone because he grabbed [her] and wouldn't let [her] go."

During another incident on "the night of March 10th, 2016," appellee testified that appellant "said he wanted to cut [her] titties off and throw them in the trash." The next day, appellee left the marital home.

Appellee testified that as a result of this previous abuse, she was afraid when appellant started showing up unannounced at her home on December 23 or 24, 2018:

> [APPELLEE'S COUNSEL]: Now having someone come to your house in the middle of the night and I believe you named six instances within a short time period, someone who sexually abused you, physically abused you, threatened you, how did that make you feel?
>
> [APPELLEE]: It made me feel very afraid.
>
> [APPELLEE'S COUNSEL]: What were you afraid of?

> [APPELLEE]: I, I just, I don't trust him at all. I, he, because of the way he's behaved towards me in the past, it makes me very afraid that he can just show up to my house, even when I've asked him repeatedly not to come. I, I just don't trust him, I don't, I don't trust him and he makes me afraid.

Under cross-examination by appellant, appellee acknowledged that she had no interaction with appellant when he came to her house on December 24 and 26, to deliver and set up the basketball goal.

On December 29, appellee admitted, she initiated that conversation about not coming to the house without notice, as appellant was leaving with Nathan. She also confirmed that she had emailed Nathan, who wanted to come over for his brother's birthday, but she "never heard back regarding any particular time or any particular plans[.]" Appellee had "not been willing" to interact with appellant directly to schedule visitation for Nathan and "repeatedly asked [appellant] to contact [her] attorney."

Regarding their marital relations, appellant elicited appellee's testimony that "at times" she objected to having sex. "As the marriage went on," she explained that she "much less frequently expressed [her] opinion because the repercussions were so difficult, to the point where he would often have sex with [her] while [she] was sleeping and take pictures of [her], without [her] permission while [she] was asleep." In the months from January through March 2016, "[t]hings were very tense and the nights were terrible," but they did have sex because "usually, . . . [she] was too afraid to say no."

Appellant also elicited from appellee that on March 10, 2017, when appellee objected to physical intimacy, appellant "tried to pull up [her] shirt and pull down [her]

shorts[.]" She "curled up and cried and said please don't and then [appellant] pushed [her] out of bed."

Finally, when appellant asked appellee what she means by describing him as "domineering," appellee testified:

> You were the one who made the ultimate decisions. You felt, you told me that you were justified in the way you treated me, that it was my fault because I was not being a submissive wife and that your anger towards me was justified because it was my fault.

Appellant testified on his own behalf. Regarding "the dates . . . being discussed," he did not "have disputes over those dates." He insisted that "the events of those days had nothing to do with [his] wife" and "had everything to do with [his] children." He admitted that he "had not been to her house before" but claimed to have "known where she lived for six months." He explained that he had "not gone to her house so as to not cause trouble."

On all of the occasions in question, appellant went to deliver Christmas and birthday gifts for the children. He explained that after the consent order expired in March 2017, appellee told him she would "not give gifts to the children on [his] behalf, so [his] only option for giving gifts to the children [was] to give gifts directly[.]" He testified that "it's not possible for me to coordinate with [appellee] to do that and every attempt [he] made to do that has . . . been ignored." Appellant delivered the basketball goal and then set it up another day, when it was light, "so they [could] enjoy that" for Christmas. He had "no intention" of "interacting with" appellee.

Regarding the December 29 visits on his youngest son's birthday, appellant "saw E-mails in which [Nathan] was invited to the house." Appellant was "his ride," so he dropped him off and picked him up, without getting out of the car. It was appellee who came of the house and "yell[ed] . . . something about . . . why was [he] at the house[,]" and replied that he was there to pick up Nathan.

With respect to the earlier consent protective order, appellant pointed out that it "said without prejudice" and without finding of wrongdoing. The court assured him that it would not "hold it against" him.

Appellant then addressed some of the allegations of "past abuse" and appellee's use of "her position with the kids to obstruct [his] access to the children." First, he "disagree[d] with [his] wife's account of [their] marriage strenuously and fundamentally[,]" denying that he was "a domineering husband[.]" He claimed that "the context of [their] Christian faith is significant[,]" explaining that "we look to the Bible, actually, to define" the relationship of husband and wife, and pointing to "words like submission and leadership and things like that" to describe "a recognized structure to the relationship[.]"

With respect to the specific incidents of sexual, verbal, and physical abuse described by appellee, appellant testified he considered it "normal that on any given day you might have one spouse who is more interested or less interested in intimacy in the marriage" and "completely disagree[ed] with the testimony that [their] marriage was characterized by a different flavor." He acknowledged they "had tensions develop in our marriage before my wife left."

The court asked about the January 15, 2016, incident in which appellee alleged that appellant restrained her and cut up her clothes. Appellant testified that his "recollection of those events is different[,]" explaining:

> [T]here were perhaps a time or two where I did take my wife by the shoulders for the purpose of talking, in the context of a tense situation, not, not unlike other contexts in life where you would take someone for the purpose of trying to focus attention and talk deliberately with them, not to restrain her.
>
> I did not shake my wife, that, she testified that in one of those cases, she, she pulled away and slapped me and that's true. And I was shocked by that because I wasn't . . . restraining her in that way. And she said that I chased after her that; that's absolutely not true. She slapped me and left and that was that.
>
> So the, the only times that I would have held her in that way were simply to engage in an earnest conversation. . . .
>
> [T]here was another time where . . . . we were talking . . . . in our bedroom, and as I recall, she expressed interest in leaving. And I . . . think I did stand in front of the door and encourage her to stay and she stayed. . . .
>
> I . . . have never approached my wife . . . in regard to physical intimacy in anything other than a desire to love her and, and for us to share mutual sexual physical whatever love. I have never done otherwise.
>
> That doesn't mean that I haven't accidentally hurt her or she hasn't accidentally hurt me, you know, unintentionally, because that's happened. If she's ever said that something was uncomfortable, I . . . stopped . . . because that clearly was never my intention.
>
> I certainly never wanted to have sexual relations with my wife contrary to her desires. That defeats the whole purpose of . . . why you have sex in a marriage.
>
> It is true that, it is true that on the night before she left I made one rash statement about cutting off her breasts. Your Honor, I, that was not a threat. I've never, I've never threatened my wife. It was, it was a rash, foolish expression of exacerbation.

> In the final weeks, final months of our living together, my wife was extremely distant, extremely cold, and as I sought to pursue her and save our marriage, I was repeatedly rebuffed and that was my response to a rebuff on that night.
>
> I had – it was the farthest thing from my mind to, to do that, it was akin to saying, you know, what somebody might say in anger, you know, I'm going to kill you. And when I heard that she took that as a threat, I, I was floored. I – that was the farthest thing from my mind.
>
> I've never, I've never even considered, much less done anything like take a weapon or, or approach my wife with a physical object or even with myself to cause harm. . . .
>
> I do love my wife, so. I, she testified that I pushed her out of bed. I, in that incident on the last night she was there, she, she rebuffed me. I responded badly in what I said and I, I pushed myself away from her.
>
> I was, you know, she didn't want me near her, so I was . . . pushing myself away and she got pushed out of bed. That was, that was not my intention, but . . . I immediately apologized to her and told her that . . . I was sorry . . . .
>
> [S]he went downstairs and laid on the couch and I . . . pursued her downstairs, not, not aggressively, I followed her downstairs. . . . [S]he was laying on the couch and I actually went down and laid down beside her and encouraged her to come back to bed and just told her I wanted to be with her.
>
> She did and we went back upstairs and went to sleep and that was . . . the end of that incident.

As for the encounter at the fair, appellant testified that he read "a communication" about his daughter's soccer team gathering there after a game, for a picnic dinner. He went to the fair that evening with Nathan and his friend, not knowing whether appellee or the other children would be there. He denied "looking for" appellee and the children, but "did run into" them. At the request of his ten-year-old daughter, they went to see a cow entered by one of her teachers or friends. Later, he asked the two boys to look at some tractors like

his father had, but appellee "wouldn't allow them to . . . and proceeded on." Appellant watched the kids on the rides and tried "to interact with them a little bit" about that, "but again, [appellee] continued to pull them away from me and . . . encourage them . . . not to interact with" appellant. Another time, appellant saw the children "in line to get some tickets and . . . gave them some money to buy tickets[.]" Although they were "in a public place" and he was "trying to enjoy that with them . . . , that wasn't palatable to" appellee, who told appellant "to leave them alone[.]"

On cross-examination, appellant acknowledged that he was "now" aware that appellee "is afraid of" him. He testified that he believes the Bible teaches that "a wife should be submissive to a husband[.]" He admitted that the pendente lite custody and visitation order required him to meet appellee in a public place, not at her house. Yet he did not arrange with her to drop off the basketball goal.

On January 12, 2018, after the court issued an interim protective order pending this hearing on a final protective order, appellant posted on Facebook a "status" with a photo of his wife, on January 12. In his view, it was not "offensive to lament and to be thankful for the marriage" and "that it's coming to this."

In closing, counsel for appellee argued that there were "multiple forms of abuse throughout the marriage," evidence by appellant's admissions regarding restraint, sexual injury, pushing appellee off the bed, and threatening to cut off her breasts. Although appellee "made it clear she was no longer interested" and even got a protective order, appellant "continued to pursue her," showing up at the school where she works and the

children attend "within eight hours of that Protective Order expiring[.]" "He doesn't stop. He's never stopped[,]" as evidenced by his pursuits at the fair. Given his belief "that a woman should be submissive to her husband[,]" appellee

> can no longer engage in any type of relationship with him because he's made it so that she's afraid for her life.
>
> And when he shows up to her house in the middle of the night, without no [sic] notice, without no expectation [sic] whatsoever and continues to show up time and time and time again, closer to the divorce, and she has no idea when he's going to come, she has no idea what he's going to do, she tells him to leave, he doesn't listen. She's terrified. . . .
>
> And he can try to blame it on the fact that he's doing it for the kids, but that's just an outright lie, because he can see the kids during his visitation times. He knows that she's terrified, that's why they're meeting in a public setting.
>
> If she wasn't terrified, we wouldn't have to do that, but we're in this situation because he doesn't listen to what she has to say. When she says, stop, he keeps going, and that's been the theme throughout the entire marriage, it's been the theme now as well and he won't stop unless this Protective Order is here.
>
> He's going to keep coming by the house because he believes he has a reason to come there because of the children. Well just because you have children with someone doesn't mean that you can show up to someone's house unannounced over and over and over again, especially after they tell you to stop.

In his defense, appellant argued in closing:

> It's a grief to me, to be sure, that my wife is afraid of me and that is a sad reality. . . .
>
> I have talked to deny the serious accusations and to take stock of legitimate things that I've done that, you know, have been wrong . . . and repent of those . . . .

I do dispute that my wife has a reason to be afraid of me and I pose no threat to her or anyone else, and never have.

. . . . [A]s I sought to have a natural and reasonable interaction with my children, my wife's fear has been a consistent theme . . . that obstructs that interaction and activity and ongoing pursuit of my children.

The events . . . that happened in relation to this recent episode . . . are not threatening and I'm sorry if they caused fear. There certainly was no intent to do that. . . .

I . . . have had to continue to pursue my children, and that's [sic] produces quite a tension, strain, that is, her fear prevents me from having that normal interaction with my children. And this is . . . a huge complication in this case and . . . this Protective Order is about those two competing dynamics.

The fact that she doesn't want me around practically turns into I'm not allowed to engage with my children. That's the practical effect of that and I've had to try to find the balance between those things.

And if the balance I'm trying to find in those things is different than the ones she finds, I find myself in Court.

And I'm sorry about that, but that's not me continuing to pursue, that's not me controlling the situation, that's my wife actually trying to control the situation. And it's not that I'm continuing to pursue her, I'm continuing to pursue my children. And it's not that I don't say that she says stop and I say continue, she says stop being a father and I say I can't, I have to continue to be a father to our children.

Your Honor, the first Protective Order that I consented to is proof of all these things. I consented to that specifically for the purpose of showing her that I would stop. . . .

I kept every last provision of that Protective Order to the letter, diligently.

They did not. They obstructed my access to the children aggressively . . . .

Is it true that when the Protective Order ended I contacted my wife in hopes that there may be a possibility of reconciliation? Certainly. I didn't

> think sending her flowers would be objectionable. I didn't think giving her children the basketball goal for Christmas would be objectionable. I didn't think actually offering to help her put groceries on her cart would be objectionable.

Appellant insisted that "this situation" arose from the "undeniable bond between [appellee], geographically and access wise, and the children[.]" He asked that the court "not punish me for wanting to be a father and wanting to pursue them." In addition, he asked the court "not to put this on [his] record[,]" citing the harm to his career as "an ordained Presbyterian minister" and his "ability to help . . . in the financial means of my family and my children."

After reviewing the requirements of Md. Code, § 4-506 of the Family Law Article, the court differentiated between the divorce case and this protective order proceeding. The court then recognized that appellee "is asking for a Protective Order . . . because she has fear of serious bodily harm being brought by [appellant] and she's basing that on a history of dealing with him in their marriage and a history . . . of abuse." The court explained its findings and conclusions, addressing appellant directly, as follows:

> Now I know you had mentioned that the problem as far as you see it is that there . . . is the children involved and you feel that your right to see your children is being impeded upon and that whenever you want to see your children, then Ms. Davenport is feeling harassed or in fear because you want to see your children.
>
> There is a P.L. Order in effect in CAD-17-06048, and in that Order it sets forth a schedule allowing you reasonable access to the children and reasonable telephone contact. And it sets forth the visitation schedule, which you are aware of that because I think you mentioned it earlier in the case, and that the visits are to take place at the Bowie Town Center Mall.

So I'm not focused on the custody issue for the purposes of making a finding in this case regarding abuse.

I'm focused on whether there has been enough proof to establish that you abused Ms. Davenport and the custody issue is an issue that will be, dealt with in the divorce case. And if there weren't a divorce case, then I will deal with it in the Protective Order case if and only if I found – made a finding of abuse, because that's the only way I could get to it, is if I find abuse.

So Ms. Davenport has indicated that you came to her home on December 23rd, 2017, December 29th, 2017, and January 4, 2018, and she has indicated that she was in fear when she woke up on the . . . 24th, I think you came on the 23rd but the 24th when she noticed . . . there was a hoop apparently that suggest to her that you had been on the property.

Prior to that there had been a Protective Order in place that had expired . . . March 2nd, 2017, . . . and then apparently she was in an address and without any notice to her you just showed up.

And so she said that that placed her in fear and that fear is because of past abuse and that she no longer trusts you and, in fact, she, at one point during the incident had called the Police . . . .

Now let me note that . . . on the 23rd, you were not there when she woke up, but on the 4th of January . . . you had come because it was Seth's birthday and that you had wanted to leave a gift. And then I believe also that Nathan, the . . . 16-year-old son that you both have was with you and he wanted to be with his siblings, so that's one account.

You don't dispute any of these accounts that you showed up on those dates; that's clear that you did. The reasons behind it are not enough for me to . . . feel that . . . it was warranted for you to come on those dates.

You said it was Christmastime, it was the 23rd, you wanted to give the hoop. You could have given it in another way. On the 29th, during the birthday, any gift you could give the children during the time that you have visitation.

There's no need to come to the home to do that, and certainly, as you said, you were in the car but at one point you did come and you rang the doorbell . . . . [A]nd there's a dispute as to how long you were at the door, a

dispute between you and Ms. Davenport, but it was enough for her to feel that she needed to call Police and she called the Police.

And then you said you . . . spoke with the Officer at that time.

So, . . . you said that you have known . . . where her address was for six months and had not come, so you didn't come before and so I guess you were suggesting that you could have come earlier than . . . these dates, because you knew where she lived, but at the same time you said you know you didn't go to the home because, to the door, at least not at first on . . . the day of Seth's birthday, but because you didn't want to cause trouble.

So you knew that coming was probably not the best thing to do because even you, your own words you used that you didn't want to cause trouble.

So those are the dates that are concerning and the reason that she filed this Protective Order, but Ms. Davenport said that she was in fear. And when it comes to fear, the Court has to determine whether her fear is reasonable, reasonable fear under the circumstances. And then I have to look to what has been the history of your conduct to determine whether her fear is reasonable, because there's actually been no physical abuse or anything during those dates that we mentioned. You – other than you didn't touch her and she didn't say you did, but it was just disturbing to her, and that's my word, of course, that you were there on these dates at her residence and she didn't anticipate you coming, didn't know and she said based on her past history with you that she didn't trust you. . . .

[L]et me just point out that the . . . 29th was the birthday and also January 4th was a birthday of the children. . . .

Now Ms. Davenport indicated . . . an incident in 2013 that were sexual in nature in which she felt that you harmed her and you didn't dispute that at all, so you didn't testify as to that 2013 incident.

And that's the incident where . . . she said that you hurt her by inserting your finger in . . . a forceful way in her vagina, but you didn't mention that at all.

The September 9th, 2015, incident, she says that you were upset with her and she talks about you . . . grabbing her arm and she slapped you . . .

The other incident was . . . December 21st, 2015, incident, where Ms. Davenport said you restrained her from . . . leaving the room and . . . you cut up her clothes.

You deny . . . that allegation, but you say that . . . if you restrained her, you restrain her by holding her shoulders and that would be to . . . get her to engage in earnest conversation, but you don't really deny that. That almost is an admission, to some degree, that you will put your hands on her in a way to, to, you said you held her by the shoulders September 2015 . . . you denied, denied chasing her, . . . but you held her by the shoulder to engage in earnest conversation.

You disagree with her recollection in general of your past behavior, but you admit to the statement you made . . . . March 10, 2016, Ms. Davenport said you had made a statement you would cut off her, and I'm going to use the breast rather than what she said, the record speaks for itself, and you would throw them in the trash.

You admitted to making that statement, but you said . . . you were trying to say you didn't really mean it. I'm not sure I'm clear on what you were saying to justify making the statement, but you did use the language akin to I'm going to kill you just to say you're going to say it, but you don't really mean it.

And I find that rather disturbing, that you would even make a statement about cutting off the breasts of a woman, your wife, whom you say you love, and obviously that's an indication, there's some indication of sexual I don't know what, but it is sexual in nature that you would use that part of the body.

That is a part of the body that is part of . . . this intimacy and something that would be as horrible as that, I . . . don't find your reason for saying it – I'm not sure you gave a good reason. You almost said you didn't really mean it, or but why would you say it and then you say you love her. That is the most disturbing of anything that has been said here to me. That you would make that statement to her.

And you describe yourself, you say you responded badly, so even you recognize that that was not a good thing to do, to make a statement like that is certainly I think a problem even . . . in your own mind that you would say, characterize your behavior as responding badly.

> So there are other instances, the fair, the Aldi [grocery store], the fair in which . . . you just showed up there but you didn't know they were going to be there. I . . . find that you knew they were going to be there and then you didn't leave the family alone when it was causing a problem. You continued to pursue them. For whatever your reasons, you did, and then in the Aldi store as well, Ms. Davenport doesn't want your help and then you leave her alone.
>
> So I find that a Protective Order is warranted in this case, even if I take all of the other accounts out, the statement that you made about harming her in a way in which you would related to her breasts is so disturbing to me and I would think that would place her in fear, and her fear is reasonable based on the accounts that I've heard during this hearing, so I'm granting the final Protective Order and I will issue that[.]

**Standards Governing Review of Protective Order**

Md. Code, § 4-506 of the Family Law Article governs final protective orders stemming from abuse. "The primary goals of the statute are preventive, protective and remedial, not punitive. The legislature did not design the statute as punishment for past conduct; it was instead intended to prevent further harm to the victim." *Coburn v. Coburn*, 342 Md. 244, 252 (1996). *See Barton v. Hirshberg*, 137 Md. App. 1, 22 (2001).

The statute provides in pertinent part:

> (a) A respondent under § 4-505 of this subtitle shall have an opportunity to be heard on the question of whether the judge should issue a final protective order. . . .
>
> **Issuance of final protective order**
>
> (c)(1) If the respondent appears before the court at a protective order hearing or has been served with an interim or temporary protective order, or the court otherwise has personal jurisdiction over the respondent, the judge:
>
> (i) may proceed with the final protective order hearing; and

(ii) if the judge finds by a preponderance of the evidence that the alleged abuse has occurred, or if the respondent consents to the entry of a protective order, the judge may grant a final protective order to protect any person eligible for relief from abuse. . . .

**Scope of final protective order**

(d) The final protective order may include any or all of the following relief:

(1) order the respondent to refrain from abusing or threatening to abuse any person eligible for relief;

(2) order the respondent to refrain from contacting, attempting to contact, or harassing any person eligible for relief;

(3) order the respondent to refrain from entering the residence of any person eligible for relief; . . . .

(5) order the respondent to remain away from the place of employment, school, or temporary residence of a person eligible for relief or home of other family members . . . .

**Duration of relief granted**

(j)(1) Except as provided in paragraphs (2) and (3) of this subsection, all relief granted in a final protective order shall be effective for the period stated in the order, not to exceed 1 year.

For purposes of this statutory scheme, "abuse" is defined as

any of the following acts:

(i) an act that causes serious bodily harm;

(ii) an act that places a person eligible for relief in fear of imminent serious bodily harm;

(iii) assault in any degree;

(iv) rape or sexual offense under § 3-303, § 3-304, § 3-307, or § 3-308 of the Criminal Law Article or attempted rape or sexual offense in any degree;

(v) false imprisonment;

(vi) stalking under § 3-802 of the Criminal Law Article; or

(vii) revenge porn under § 3-809 of the Criminal Law Article.

FL § 4-501(b).

Under § 4-506(c)(1)(ii), the party seeking a final protective order must show "by a preponderance of the evidence that the alleged abuse has occurred." *See Barton*, 137 Md. App. at 21. "Allegations of past abuse provide the court with additional evidence that may be relevant in assessing the seriousness of the abuse and determining appropriate remedies." *Coburn*, 342 Md. at 258.

When reviewing the grant of a final protective order, we accept the hearing court's credibility assessments of the witnesses and the court's findings of fact unless those findings are clearly erroneous. *See Barton*, 137 Md. App. at 21. Our task on appeal is to apply the law to those facts without deference. "As to the ultimate conclusion, . . . 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).

## DISCUSSION

### I.

Appellant contends that the circuit court's "decision to grant the final protective order was not correct based on the evidence which showed both (1) a lack of fear on the part of the appellee and (2) the absence of abuse on the part of appellant." In support, appellant cites the following exchange during his cross-examination of appellee regarding

their conversation on December 29, when appellee informed appellant that she did not want him to come to her house and would call the police if he did so again:

[APPELLANT]: Did I move towards you?

[APPELLEE]: No, you didn't

[APPELLANT]: Did I move away from you?

[APPELLEE]: You got in the car with Nathan?

[APPELLANT]: And then what did I do?

[APPELLEE]: You left.

In appellant's view, "[t]his description of events is exactly the opposite regarding both the Appellant and the Appellee that one would expect if the Appellee is fearful and the Appellant is being abusive." He argues that if his mere presence at appellee's residence "constitutes 'an act that places a person eligible for relief in fear of imminent serious bodily harm,' the Protective Order statutes can be easily abused and manipulated by one parent to any number of ends, such as harassment or to prevent the other parent access to children the two have in common."

Appellee responds that appellant's argument amounts to "[c]herry-picking four lines" from the 150-page transcript and "does not demonstrate any clear error[.]" We agree.

The testimony cited by appellant falls far short of establishing that appellee was not afraid of him. To the contrary, that exchange is consistent with appellee's testimony that he knew appellee did not want him to come, so that when appellant continued to make unannounced visits, she was so frightened that she felt the need to call police to protect her.

The evidence we have set forth in detail establishes that appellee had previously requested that appellant not contact her directly. Moreover, appellant was not permitted to come to appellee's house for visitation with their children. Before December 23, appellant had not come to appellee's house. Yet by the afternoon of December 29, when this exchange between appellant and appellee occurred, appellant had made unannounced visits to appellee's house on December 23, December 26, and earlier in the day on December 29.

The court was entitled to view the exchange cited by appellant in light of the couple's marital history, in which appellant admittedly expected appellee to be submissive, physically harmed her and verbally threatened her, then pursued her against her wishes after she left the marital home. Appellee testified that the conversation cited by appellant occurred after she told appellant that she was "very uncomfortable with [appellant] coming [t]here without prior arrangement" and warned him that she "was going to call the Police if [he] show[ed] up [t]here again." As the ensuing testimony established, appellant made another unannounced visit on January 4, this time ringing the doorbell repeatedly when he knew appellee was inside. Appellee called the police in fear.

Viewing the excerpted exchange in the context of the full hearing transcript, there is substantial evidence to support the court's findings that appellee feared appellant and that his repeated unannounced visits were abusive. The court's grant of a protective order in these circumstances was neither clearly erroneous nor an abuse of discretion.

**II.**

Appellant next contends that "the trial court's decision to grant the final protective order was not correct based on the evidence, because the appellee's testimony demonstrates that she, the appellee, reasonably knew that the appellant might come to her house, and she had approved of the same." In support, he cites the following colloquy:

> [APPELLANT]: Did you invite our son Nathan to come over on the 29th, his brother's birthday?
>
> [APPELLEE]: Nathan asked about coming over.
>
> [APPELLANT]: Did you, did you say that he could come over?
>
> [APPELLEE]: Yes, I did.
>
> [APPELLANT]: Did you say that he could come over in the morning and spend the day?
>
> [APPELLEE]: Yes, I did.

In this Court, appellant argues that

> [s]ince the Appellee knew that Appellant needed to drive their son, who did not have a driver's license at the time, if their son was to 'come over' to her house, it is not factually correct that the Appellant came to her house unannounced or that his coming would have been a surprise either to drop off or to pick up their son."

As appellee points out, this argument is refuted by the undisputed evidence that appellant knew that appellee did not want him to come to her house. Indeed, appellant admitted that he was not invited to accompany Nathan to appellee's home on December 29, 2017. Although appellee invited Nathan to visit on his brother's birthday, she did not agree to appellant bringing the child directly to her house or picking him up there. Nor was she ever asked whether he could do so. Instead, she testified that Nathan said he

wanted to come but she heard nothing further about arrangements. Although it may have been logical for appellant to provide that transportation, it was equally logical for appellee to do so, by picking up Nathan at the public setting approved for visitation. The court was entitled to conclude that, in light of this uncertainty, the email to Nathan did not amount to a de facto "invitation" to appellant.

**III.**

Appellant further argues that "the trial court's decision to grant the final protective order was not legally correct, because the finding of abuse was in reference to events that occurred well over one year before the petition for protection was filed." In support, he first asserts that "[n]o actions taken by the Appellant between December 24, 2017, and January 4, 2018, are grounds for causing 'fear of imminent seriously [sic] bodily harm' per . . . Family Law Article, § 4-501." This ignores appellee's testimony about appellant's sudden and unannounced visits to appellee's home, after a prior protective order and months in which appellee believed appellant did not know where she lived. These unarmed visits escalated from a visit during the night on December 23 or early on the 24th, when appellant left the goal and a note, to the January 4 visit when appellant repeatedly rang the doorbell and stayed for fifteen minutes, causing appellee to call police. Given the history of escalating physical and verbal abuse – particularly the threat to cut off appellee's breasts, which appellant made the night before appellee finally left him – and appellee's testimony that she "was terrified" by appellant's unannounced visits, substantial evidence supports

the court's finding that appellant's actions gave appellee reason to fear imminent bodily harm.

Appellant also contends that, "even if the finding of abuse is sustained, the only abuse alleged was isolated to one or two incidents that were separated from the Petition for Protection and the Final Protective Order by more than one year[.]" In his view, "[t]his is significant since Family Law Article § 4-501(j) sets time limits for granting final protective orders[.]" As appellant reads the statute, it precludes the court from granting a final protective order "for a finding of abuse that occurred well over one (1) year before the application for protection."

Appellant misreads the statute and again misstates the record. By its clear terms, FL § 4-506(j)(1) provides that, with exceptions not applicable here, "all relief granted in a final protective order shall be effective for the period stated in the order, not to exceed 1 year[.]" This restricts the length of a final protective order, without limiting the period of past abuse the court may consider in determining whether to grant that order. The Court of Appeals has held that such "[e]vidence of past abuse is often the most indicative evidence of the likelihood of future abuse" and gives "context in which the present allegation of abuse occurred[.]" *Coburn*, 342 Md. at 262.

The protective order was premised on the events that occurred from December 24, 2017, through January 4, 2018, not on prior acts of abuse. As discussed, the evidence of past abuse that occurred before appellee left appellant on March 11, 2016, was relevant to

establish the fear she experienced as a result of appellant's actions between December 23, 2017, and January 4, 2018, the period covered by the petition for protection.

**IV.**

In his final assignment of error, appellant argues that "the trial court's decision to grant the final protection order was not legally correct, because the court treated the appellant as if he were subject to a protective order where no such order existed." This contention rests on the premise that "the only grounds upon which the Final Protective Order is granted is that the Appellant went to the Appellee's house." According to appellant, however, he "was under no order not to visit the house" and the fact that "five of his six children were residing at the home is powerful . . . reason for him to make such a visit, especially under the circumstances of holidays and birthdays." Appellant posits that it is "circular logic" "[i]f a man can be prohibited from going to his wife's home because he went to his wife's home[.]"

This argument, too, has no support in the record or the law. The court did not treat appellant as if he were subject to a protective order. Although the court observed that appellant was subject to a consent protective order issued on September 2, 2016, it expressly recognized that order expired on March 2, 2017, then assured appellant that there were no underlying findings of abuse that would be held against him as a result of that order.

The existence of the expired order, however, did establish that appellant was aware that appellee did not want him to contact her. Nor did she want him to visit her home,

much less to do so unannounced. As discussed, appellant and appellee both testified that appellant was aware that appellee did not want him at her house. Indeed, appellant admitted that his presence would "cause trouble."

## Conclusion

Because this record contains substantial evidence supporting the hearing court's predicate findings of fear and abuse, we shall affirm the final protective order. Although we note this appeal would ordinarily be moot because the order expired in January 2019 while this appeal was pending, we consider this appeal due to domestic violence being a significant public policy concern. *See* La Valle v. La Valle, 432 Md. 343, 352 (2013). And, we reiterate that appellant's desire to continue parenting the children he shares with appellee does not give him license to enter the residence of appellee over her objection. Moreover, the terms of any superseding custody and visitation orders may limit when and where appellant may have access to their minor children.

**PROTECTIVE ORDER OF JANUARY 29, 2018, AFFIRMED. COSTS TO BE PAID BY APPELLANT.**