

Circuit Court for Prince George's County
Case No. C-16-FM-23-809591

UNREPORTED
IN THE APPELLATE COURT
OF MARYLAND*

No. 1031

September Term, 2023

ANDREW UCHEOMUMU

v.

ISABELL TAILOR PROSPER

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

JJ.

Opinion by Meredith, J.

Filed: July 17, 2024

*This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for its persuasive value only if the citation conforms to Rule 1-104(a)(2)(B).

Andrew Ucheomumu (“Father”), appellant, filed this appeal after the Circuit Court for Prince George’s County denied his petition for entry of a protective order against Isabell Prosper (“Mother”), appellee, who is the mother of a child they share in common.¹

Both parties were self-represented in the circuit court. At the outset of the hearing that the circuit court conducted to determine whether to issue a final protective order, Father requested a continuance. But Mother opposed the request for a continuance, and the court denied Father’s request. At the conclusion of the hearing, the circuit court denied Father’s petition. This timely appeal followed. Father is again self-represented, and only Father has filed a brief in this Court.

Father presents a single question for our review, which we have rephrased as follows:

Did the circuit court commit reversible error in denying Father’s request for a continuance?²

¹ Father initially filed his petition against Mother in the District Court of Maryland for Prince George’s County, requesting a protective order against Mother. After the District Court granted Father’s petition for a temporary protective order, the District Court transferred the matter to the Circuit Court for Prince George’s County pursuant to Maryland Rule 3-326(c)(1), which permits the District Court to transfer a protective order action to the circuit court when there is a related action pending in the circuit court that involves the parties. When the District Court issued the instant temporary protective order, Father and Mother were parties in a custody matter pending in the Circuit Court for Prince George’s County.

² The question presented in Father’s brief reads:

Whether in this case involving domestic violence, the court’s denial of a brief continuance to obtain crucial evidence outside the control of the Appellant was prejudicial to the Appellant?

Perceiving no reversible error in the denial of the request for a continuance, we shall affirm the judgment of the circuit court.

BACKGROUND

Father and Mother are the parents of a minor child (the “Child”), who was born in 2019. At all times relevant to this appeal, Father lived in Prince George’s County, and Mother lived in Washington, D.C.

On June 27, 2023, Father filed, in the District Court, a petition for protection from domestic violence. In that petition, Father alleged that, on or about June 27, 2023, he and the Child were at his residence in Prince George’s County. Father alleged that, at some point that evening, Mother gained access to his apartment building and started kicking the door to his apartment. Father eventually called the police, and, after the police arrived, Mother left. Father claimed that Mother had threatened him and that he was in fear of an imminent violent assault by her.

On June 28, 2023, the District Court issued a temporary protective order against Mother and ordered the parties to return to court on July 14, 2023, for a final protective order hearing. Pertinent to this appeal, the June 28 order stated in part:

A FINAL PROTECTIVE ORDER HEARING SHALL BE HELD ON 07/14/2023, AT 09:00AM AT CIRCUIT COURT AT 14735 Main St., Upper Marlboro, MD 20772.

NOTICE TO ALL PARTIES: Please bring all photos, documents and other evidence that you may have with you to court on your hearing date.

Shortly after issuing that order, the District Court transferred the case to the circuit court on June 28, 2023, pursuant to Maryland Rule 3-326(c)(1).

Father’s Request for a Continuance

On July 14, 2023, the parties appeared in the circuit court for the final protective order hearing. At the beginning of that hearing, the court asked the parties: “[W]hat is going to happen with today’s proceeding?” Father responded:

[Father]: Your Honor, I wanted to ask for a postponement because I subpoenaed the police to bring the bodycam cameras [sic] and also the 911 tape, and also my building has not produced – they’re going to be producing the surveillance videos shortly.

So since I have the burden of proof, I want to make sure that I have all my evidence.

THE COURT: Right. That was supposed to be today. Are you prepared to proceed today?

[Mother]: Yes. I’m prepared to proceed, Your Honor, because the minor is still underneath of his care, and I need that to be (indiscernible).

* * *

THE COURT: This isn’t a custody case.

[Mother]: Yes, I understand. But it’s – I live in Washington, D.C., and they’ve already established that it’s parental kidnapping under D.C. code, and I have the paperwork. . . .

THE COURT: . . . [W]hat do you have from the District of Columbia?

[Mother]: Well, orders stating parental kidnapping under D.C. code.

* * *

THE COURT: . . . How did you get a court order for that?

[Mother]: I filed for emergency custody. We’ve been co-parenting for three and a half years with nothing in place; with no order in place. And once this incident occurred, I filed in my home state. . . .

THE COURT: How do you have kidnapping if there is no [custody] order in place?

[Mother]: Well, under the D.C. code. Like Maryland and D.C. laws are different.

* * *

THE COURT: . . . [I]f you were to proceed today, the rules of evidence and procedure would apply. So some of the things that are you [sic] saying, which may be beneficial to the Court, if they are not properly presented to the Court, the Court would never hear them.

So that is why I am just giving you your options as to seeking the services of an attorney.

* * *

So I am going to pass this and let you think about it, and we will come back to it.

After a brief recess, the hearing resumed, and the colloquy among the court and the parties continued as follows.

THE COURT: Okay. So before we get started, just a little bit of background.

How old is the child?

[Mother]: Three.

THE COURT: And from birth to three years of age[,] where she has been living?

[Mother]: With me at [Redacted] Connecticut Avenue, N.W.

* * *

THE COURT: And when did [Father] have access or when did he have the minor child?

[Mother]: June the 23rd, 2023.

THE COURT: Okay. And so, as you are saying, there is no current order in place? Is that what you are saying?

[Mother]: Yes, Your Honor.

THE COURT: Okay. And you are ready to proceed?

[Mother]: Yes.

THE COURT: Okay. All right.

Your continuance is denied.

* * *

THE COURT: Okay. I will hear testimony as to what caused you to go to the District Court to file for a protective order on June 27th.

[Father]: Yes, Your Honor.

Evidence

Father thereafter testified that, at around 7:00 p.m. on the evening of June 27, 2023, he and the Child were at Father's home when Father heard a "loud bang" on the front door. Father gathered the Child, put her in the closet, and called 911. Father then heard a voice, which he later recognized as Mother's, coming from the hallway outside the residence and shouting. He testified that, among other things, he heard Mother say: "I'm going to kill you guys" and that was said "right before the police came." When the police arrived, Father opened the front door to allow the police in, and he saw Mother. Father testified that he was scared.

Father testified that he lived in a "secure building" and that Mother was trespassing when she entered the building. At that point in Father's testimony, the court declared that it was not going to assume, without additional evidence, that Mother had been trespassing.

When Father responded that he had wanted a continuance so that he could gather such evidence in the form of the building’s surveillance video, the court noted that Father’s request had been denied.

Father also claimed that Mother had damaged his front door, and he provided, as evidence, a picture of the front door. Upon reviewing that evidence, the court noted that, although the court could see some “white scratches” on the dark colored door, the court was “unable to visually see any dents.”

Father testified that the Child had been living part time with each of the parents, explaining: “She has been living 50/50 with us, and for the last seven months, since November last year, she has stayed more with me.”

Father repeatedly said that Mother was yelling while he was on the phone with 911, and “the only thing I was hearing is banging and trying to break into my house.” The judge stated: “You have said that five times now, sir. Anything else that you would like to add?” Father replied: “Your Honor, the only thing I need to add is that this particular incident was so scary.”

Father testified that, after the incident, he filed the instant protective order action against Mother so that “what she did wouldn’t happen again because I don’t know what she was doing.” Father noted that Mother filed a similar action against him in Washington, D.C. Father stated that that action had been denied. Father asserted that Mother had filed a

simultaneous claim of “parental kidnapping” in Washington, D.C., which had also been denied.³

Before the conclusion of Father’s testimony, the court sought clarification about the shared custody of the Child, asking Father these questions:

THE COURT: Why wouldn’t you give the child back to the mother too? You just said it was 50/50. It is already July 14th. You just said – you testified under oath that you all split seeing the child. She hasn’t seen the child. So what is the problem?

[Father]: The child was only with me for about five days.

THE COURT: Today is the 14th. So she can have the child back now?

[Father]: No, Your Honor.

* * *

THE COURT: . . . My question is – you have had the child since June . . . 23rd. So based on your testimony you said it is pretty much 50/50. So it is about time that she would now have the child, isn’t that correct, based on what you testified under oath?

* * *

[Father]: No, Your Honor. Because if she gets the child, when am I going to get my child back? Because now that we have this contentious thing, then it is important that the child continues to have a relationship with the mother and the father.

THE COURT: Okay. Anything else, sir?

[Father]: No, Your Honor.

³ In Washington, D.C., a person may file for a civil protection order based on a complaint of “parental kidnapping.” D.C. Code Ann. § 16-1001, *et seq.* Under that statutory scheme, a parent is prohibited from, among other things, intentionally concealing a child from the other parent or taking a child away from the other parent with the intention of preventing the other parent from exercising his or her custody rights. D.C. Code Ann. § 16-1022.

At the conclusion of Father’s testimony, Mother took the stand, and the court asked her about the proceedings in Washington, D.C. Mother insisted that her claim alleging parental kidnapping had not been denied but was still pending. The court then asked the parties if they had an order showing the status of that case, and Father produced an order showing that the action had been “held in abeyance” on June 29, 2023. Father claimed that the order was incorrect and that Mother’s claim had been “denied.” The court asked Father if he had an order reflecting that, stating: “I have an order that says [‘]held in abeyance.[’] Do you have an order that says [‘]denied[’]?” Father then stated that the D.C. court had not yet “sent out an order on that hearing[.]” Father added: “That’s exactly one of the reasons why I said we need to postpone this. Because after the hearing on the 29th, that was the abeyance.”

Shortly thereafter, both parties rested. The court then announced its ruling: “Even in the light most favorable to [Father], the Court finds that [Father] did not meet the burden of proof.” Accordingly, the court denied Father’s request for a final protective order. This appeal followed.

DISCUSSION

Father contends that the circuit court erred in denying his request for a postponement. He asserts that the court should have granted the request for two reasons. His first reason was not timely raised at trial and is unpreserved. He states in the heading of the first argument in his brief: “The court wrongly denied motion for continuance based on wrong assumption of unfounded parental kidnapping[.]” (Capitalization altered.) But, when he requested a continuance at the beginning of the trial, he made no mention of

parental kidnapping or his need to obtain additional documentation from a court in the District of Columbia.

His second reason for contending that the court erred in denying his request for a continuance is that he needed to obtain the surveillance footage from his residence showing that Mother was trespassing when she came to his home on June 27, 2023, and he needed to obtain bodycam recordings from the police. He asserts in his brief that he “immediately subpoenaed the police bodycam videos, the 911 tape and the building surveillance camera videos. . . . These [sic] subpoenaed evidence take[s] about 30-days to produce[.]” But, despite his apparent recognition that he would not have these materials by the date of the hearing scheduled for July 14, he did not seek a continuance until the case was called for the hearing on the merits. Father acknowledges in his brief that trial courts “have discretion in how to conduct a hearing or trial[.]” Father has not persuaded us that the trial judge in this case committed an abuse of discretion in denying a request for postponement that was made for the first time after the case was called for the hearing on the merits.

Maryland Rule 2-508(a) states: “On motion of any party or on its own initiative, the court may continue or postpone a trial or other proceeding as justice may require.” Maryland cases reviewing a trial court’s denial of a request for continuance make plain that “the decision to grant a continuance lies within the sound discretion of the trial judge.” *Touzeau v. Deffinbaugh*, 394 Md. 654, 669 (2006). This Court observed in *Serio v. Baystate Props., LLC*, 209 Md. App. 545 (2013): “We review the trial court’s decision for an abuse of discretion and unless [the] court acts arbitrarily in the exercise of that discretion, [its] action will not be reviewed on appeal.” *Id.* at 554 (quotation marks and citation omitted).

We also stated in *Serio*: “An abuse of discretion occurs where no reasonable person would take the view adopted by the court or if the court acts without reference to any guiding rules or principles.” *Id.* (quotation marks and citation omitted).

As a preliminary matter, we hold that Father’s argument regarding the Washington, D.C. order is unpreserved. When Father initially requested the continuance, the only grounds stated by Father were that he “wanted to ask for a postponement because [he had] subpoenaed the police to bring the bodycam cameras and also the 911 tape, and also [his] building . . . [was] going to be producing the surveillance videos shortly.” After the court heard Mother explain that Father was withholding access to the Child, the court denied the requested postponement, the proceedings continued, and Father did not raise any further objection or assert any additional grounds at that time. It was not until the end of the proceedings that Father mentioned—in response to a comment made by the court—that he had wanted a continuance so that he could obtain the D.C. order to use as evidence in this case. Because Father did not offer that reason until well after the court had denied his request for a continuance, Father’s appellate argument is not preserved for our review. *Cf.* Md. Rule 2-517(c) (“For purposes of review by the trial court or on appeal of any [non-evidentiary] ruling or order, it is sufficient that a party, *at the time the ruling or order is made or sought*, makes known to the court the action that the party desires the court to take or the objection to the action of the court.” (emphasis added)).

With respect to the argument that was preserved for review—that the circuit court abused its discretion in refusing to grant Father a continuance long enough for him to obtain police bodycam video, the 911 recording, and surveillance video showing Mother’s entry

into Father’s apartment building—we cannot say that the court abused its discretion in refusing to grant a continuance so that Father could obtain that additional evidence. Father acknowledges in his brief that the parties he served with subpoenas would not be able to produce the evidence at a hearing on July 14. But, despite that, he made no effort to obtain a continuance until after the trial had been called for a hearing on the merits. Although some judges may well have exercised their discretion to grant such a belated request for a continuance if the movant had convinced them that the evidence was crucial to a resolution of the case, we are not persuaded that it was an abuse of discretion under the circumstances confronting the trial judge in this case for the court to conclude that the litigant had failed to raise the issue in a timely fashion. We cannot say as a matter of law that no reasonable judge would have denied Father’s last-minute request for a continuance under the circumstances presented in this case.

**JUDGMENT OF THE CIRCUIT COURT
FOR PRINCE GEORGE’S COUNTY
AFFIRMED. COSTS TO BE PAID BY
APPELLANT.**