

Circuit Court for Montgomery County  
Case Nos. C-15-FM-23-812009 &  
C-15-FM-23-812084

UNREPORTED  
IN THE APPELLATE COURT  
OF MARYLAND\*

Nos. 2268 & 2278

September Term, 2023

---

FEDOR KARMANOV

v.

IULIIA VYSOTINA

---

Friedman,  
Kehoe, S.,  
Sharer, J. Frederick  
(Senior Judge, Specially Assigned),

JJ.

---

Opinion by Sharer, J.

---

Filed: October 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).

In this consolidated appeal, we are asked to review the decisions of the Circuit Court for Montgomery County denying the petition for a protective order filed by appellant, Fedor Karmanov (“Husband”), and granting the petition filed by appellee, Iuliia Vysotina (“Wife”).<sup>1</sup> Husband, who noted the appeals, presents the following questions, which we have rephrased slightly as follows:<sup>2</sup>

---

<sup>1</sup> Although represented by counsel in the circuit court, Mr. Karmanov is self-represented on appeal. Ms. Vysotina has not filed an appellee’s brief.

<sup>2</sup> Husband phrased his questions as follows:

1. Did the trial court abuse its discretion in denying Appellant’s request for discovery, which would have allowed him to obtain exculpatory evidence to impeach Appellee’s claims and credibility, thereby depriving Appellant of a fair opportunity to present his defense?
2. Did the trial court err in failing to properly assess the credibility of Appellee in light of substantial impeachment evidence, including material inconsistencies in her accounts of the December 15, 2023 incident, admissions of being the initial aggressor, lack of corroborating evidence for her claims, physically impossible scenarios described in her testimony, attempts at blackmail, a demonstrated pattern of violence, and disregard for the court orders?
3. Did the trial court err by engaging in improper speculation, without evidentiary support, about hypothetical provocations in order to disregard video evidence that clearly showed Appellee as the unprovoked aggressor in multiple assault incidents, and then relying on this unsupported speculation to justify a finding of self-defense by Appellee, despite Appellee’s own statements not claiming it?
4. Did the trial court violate Appellant[’s] 14th Amendment due process rights by depriving him of his property interest in the solely-owned family home through the protective order, without providing adequate procedural protections such as proper notice and a meaningful opportunity for Appellant to object before being deprived of his property rights?

1. Did the trial court abuse its discretion in denying Husband’s mid-trial request for discovery, thereby depriving Husband of a fair opportunity to present his defense?
2. Did the trial court err in finding Wife to be a credible witness?
3. Did the trial court err in granting Wife’s petition for a protective order and denying Husband’s petition?
4. Did the trial court violate Husband’s constitutional rights by granting Wife exclusive use of the marital home during the duration of the protective order?

For the reasons to be discussed, we answer “no” to these questions and shall affirm the judgments.

## **BACKGROUND**

### Factual & Procedural History

Husband and Wife, both natives of Russia, married in February 2022. They have one child together, a daughter born in August 2023 (“Child”). At the time of the December 2023 incident leading to the filing, by both parties, of the protective orders at issue here, Husband was forty-eight years old and Wife twenty-six years old. Husband, who speaks fluent English, works from home as a software engineer for NIH. He also has two side businesses he runs from the home. Husband had resided in the United States for about thirteen years and his marriage to Wife was his fifth marriage, the previous four ending in divorce. Wife relocated from Russia to the United States to marry Husband. At the time of the protective order hearings, Wife was unemployed, did not speak English, had no relatives in the United States, and was Child’s primary caretaker.

The relationship between the parties has been turbulent. Husband has filed for divorce three times – twice before the incident leading to the requests for protective orders and once after.<sup>3</sup>

On December 15, 2023, Husband and Wife quarreled. Wife called the police who interviewed both parties. The police left without arresting either person.

Three days later, Husband filed a complaint for divorce. The day after that, December 19, Husband filed his petition for a protective order on behalf of himself and Child seeking protection from Wife based on the December 15 incident and an alleged incident on October 14, 2023.<sup>4</sup> The circuit court granted a temporary protective order, effective through December 26, which was served on Wife on December 22 at 3:50AM. At that time, Wife was directed to vacate the marital home without Child, who at that time was four months old and breast feeding.

Later that day, December 22, Wife filed a petition for protection from Husband. The court granted her a temporary protective order, effective through December 26. The court scheduled a final protective order hearing, in both cases, for December 26. Also, on December 22, Wife filed an application for statement of charges against Husband based on

---

<sup>3</sup> Husband withdrew his first two complaints for divorce. His third complaint and Wife’s counter-complaint for absolute divorce are presently pending.

<sup>4</sup> Husband testified that he sought the protective order on behalf of Child, as well as himself, based on concerns for Child’s safety because he claimed Wife “cannot control herself and she attacked [Husband] when [he] was taking care [of] the baby” and also “while she was holding the baby[.]” There was no evidence produced at the hearings that Wife abused Child. Nor were any arguments made to support such a claim.

the December 15 incident and an arrest warrant was issued charging him with two counts of second-degree assault.

On December 26, the parties appeared in court, Husband with counsel and Wife *pro se*, for the final protective order hearing. Husband testified that the quarrel on December 15 had begun a few days prior when Wife found a souvenir pen on his desk that was gifted him by a friend. The pen had a “trick” such that “if you pull it, it presents something” that he agreed is “moderately indecent[.]” Husband claimed that Wife “harassed” him for a few days about the pen and why he had not told her about it. This harassment—which Husband related involved Wife accusing him of lying “a hundred times a day” and chasing him around the house—eventually “escalated to an assault.” According to Husband, on December 15th, Wife banged on his office door (located on the second floor of the home) and demanded that he admit that he is a liar. When Husband opened the door, Husband claimed that Wife punched him in the left eye. Husband related that he then went to the first floor and Wife began “blackmailing” him by saying she would call the police unless he agreed to a divorce with the following conditions: Wife would have custody of Child, Wife and Child would move to Russia, and Husband would pay spousal and child support. When he refused to agree to her terms, Wife called the police.

Husband asserted that Wife “regularly . . . attacked [him] and she accused [him] of attacking her[.]” and to protect himself from Wife’s violent outbursts, he had converted his home office to a “saferoom” that he could lock himself in. He submitted photographs showing the room both before and after the conversion. He claimed that Wife had assaulted him three or four times between October and December 2023. According to Husband, Wife

would also leave him “insulting notes,” saying things like she wished he would die soon. A photograph Husband had taken of one note purportedly written by Wife, that he submitted into evidence, read: “Everything is over. Go f\*\*\* yourself. Prepare for the court.” Husband also submitted photos he had taken of himself showing “scars” on his body, which he testified were inflicted by Wife during quarrels in October and November 2023. Wife objected to Husband’s admission of the photos into evidence, claiming that the “scratches” were not inflicted by her but rather incurred by Husband when he was “doing some repairs.” Her objection was overruled.

Husband submitted into evidence a number of videos he recorded during quarrels with Wife, including several from different days in November 2023. The videos were played for the court and the words spoken by the parties captured thereon were translated from Russian to English with the assistance of the court appointed translator.<sup>5</sup>

In one video submitted by Husband, it appears that Wife knocked Husband’s glasses off his face. Husband, in testifying about another video, claimed that Wife—after breaking into his “saferoom”—tried to stab him with scissors and then tried to push him down the stairs. Wife is heard on the video saying to Husband: “So, you bringing me to the edge and you, you have beaten me up and you hit me right here in the presence of the child.” Wife also is heard saying, “So, you, you f\*\*\* hit me. You f\*\*\* hit me up, have beaten me up over here” and “[I] can die from fear.”

---

<sup>5</sup> Because one or the other party’s voice was sometimes “muffled,” the translation was not always complete. Given the difficulties, the court ultimately watched the videos without any translation.

Husband denied that he ever hit or kicked Wife, other than “in self-defense when [he] tried to protect” himself from her assaultive behavior. At the hearing, Husband, who had been caring for Child since the protective order was served on Wife four days earlier, claimed that he had no issues tending to Child.

Wife, in response to questions posed by the court, testified that she has been Child’s full-time provider since her birth and that she believes, one hundred percent, that she is a “safe person” to care for Child. She admitted that she and Husband had quarreled on December 15 and she had called the police, but she denied touching him. She claimed that the police did not arrest Husband because she had told them not to. In subsequent testimony, she claimed that her reason for telling the police not to arrest Husband that day was because she “was afraid” that afterwards he would return and “beat[]” her up.

The court continued the hearing until December 28, but because Husband was about to be served with the arrest warrant for the assault charges sought by Wife, the court first addressed temporary custody of Child so that Child could be cared for. The court found that, given that Husband was about to be taken into custody and his bail status was then unknown, Wife was the appropriate person to have custody of Child, at least until the next hearing. And because Wife had no place to live other than the marital home—and the home was the best place for Child—the court awarded Wife temporary occupancy of the marital home and ordered Husband to stay away.

The next day, December 27, Husband filed assault charges against Wife.<sup>6</sup> On December 28, the parties returned to court to continue the final protective order hearing. This time, Wife was represented by counsel.

Wife testified that, when she returned to the marital home following the court hearing on December 26 (after having been away since the service of the protective order on her on December 22), she discovered the mattress in Child’s crib “was covered with urine, dirty, also with some vomiting messes” and she found “a plethora of dirty baby clothing as well as dirty bottles.” She submitted into evidence a photograph she had taken of the sheet on the crib mattress.

Wife portrayed Husband as the aggressor of the December 15 incident. She testified that Husband started “grabbing” her and “making arm movement, like, attempting to hit” her. Wife “started protecting” herself because she “realized that he wanted to beat [her] up.” She claimed that Husband grabbed her by the neck, dragged her across the floor by her hair, threw her on the floor, and kicked her. Wife testified that she told Husband they had to divorce, otherwise she would call the police, because she had “been sustaining domestic violence on monthly basis[.]” She then “started googling” to learn “how to reach the police.” Wife submitted into evidence, without objection, photographs she said she had taken of herself on December 15 showing a mark on her nose and bruises, which she claimed were inflicted by Husband during the December 15 incident.

---

<sup>6</sup> The assault charges the parties filed against each other were ultimately nol prossed.



Wife testified that this was not the first time Husband had abused her, claiming, again, that it “has been going on every single month since [she] came to America.” Wife related that, when she was three months pregnant, Husband had grabbed her by the throat, grabbed her by her hands and dragged her across the floor, and kicked her. She submitted photos of herself, taken by herself, showing bruises and marks on her body she testified that she sustained in that incident.

Wife also related an incident from July 2022. She claimed Husband was drunk and she heard him loading his firearm. When he went downstairs for more alcohol, she grabbed the firearm and hid it under the bed in another room. She then locked herself in a bathroom. Husband then went looking for his firearm and also opened the bathroom door where Wife was hiding. Husband grabbed Wife by her hands to pull her out of the bathroom and in doing so squeezed her hands so tight that he broke her finger. (Wife submitted a photo of her finger, in what appears to be a splint, after she received medical treatment the next day.) When Husband retreated to the second floor and Wife heard him grab the firearm, she rushed to the garage and hid there. Wife recorded the incident from this point forward. She claimed that she was fearful that Husband was going to kill her. Wife’s video of the July 2022 incident was played in court and submitted into evidence. The video shows Wife crouching beside a vehicle in the garage, Husband approaching her, Husband returning to the house, and Husband (in the house) holding a large firearm.

During cross-examination of Wife, Husband’s counsel questioned the photos Wife admitted into evidence, which she claimed during her direct examination depicted injuries she sustained during the December 15 incident. In an attempt to discredit her testimony

that the photos were actually taken on December 15, Husband’s counsel sought to have Wife access the photos (which were previously printed and also placed on a flash drive for submission into evidence) on her iPhone in open court to “show us those photographs with the time stamps, metadata, showing [they were] taken December 15[.]” Wife replied that Husband had “broke[n] into” her phone and “breached the security of [her] account” and that she had “proof that he logged in on December 27 . . . into [her] iCloud.” Counsel asked Wife to answer “yes or no, you do not have photographs with a time stamp saying December 15, 2023? Just a yes or no.” Wife answered: “He removed - - yes.” Husband’s counsel asked the court to take “notice of the appearance of” Wife and “of the fact that she does not have any marks” on her face and did not have them when the final protective order hearing began December 26.

Husband’s counsel also elicited from Wife that, on December 24, she had posted a video on TikTok which was submitted into evidence by Husband and played for the court. The video depicted Wife standing next to a Christmas tree that she had recorded in the marital home and Husband attempted to utilize the video to prove that “she posted something December 24th which . . . shows no marks whatsoever on her face.” Wife, however, claimed she had taken the video prior to the December 15 incident and merely posted it to TikTok on December 24 at a time when she was barred from the premises.

When asked, Wife admitted that she had taken the video posted to TikTok with her cell phone. Mother’s counsel objected. The exchange about which Husband now complains then occurred:

[HUSBAND’S COUNSEL]: Can you check the date on your cell phone when this video was taken?

THE COURT: We’re not going to pause the proceeding to go through a cell phone right now. If you have evidence - - if you have evidence that she took it on a date after December 15th, show me the evidence.

[HUSBAND’S COUNSEL]: Respectfully, Your Honor, I’m trying to get the evidence. She says - -

THE COURT: Okay. But this - -

[HUSBAND’S COUNSEL]: - - she can get on the cell phone - -

THE COURT: We’re not going to have a discovery session here in the middle of an emergency proceeding. What you’re looking - -

[HUSBAND’S COUNSEL]: I’m - -

THE COURT: - - for right now is discovery from a witness who’s on the stand testifying. That’s not appropriate at an emergency hearing. It’s not an appropriate thing to do at any hearing, but there’s not even discovery that goes on at these hearings.

[HUSBAND’S COUNSEL]: Incorrect, Your Honor. I’m asking for impeachment. I’m trying to impeach her - -

THE COURT: Okay. Ask a question.

[HUSBAND’S COUNSEL]: I asked her a question: What is the date - - she has the date when this video was taken. I’m asking for the date when this video was taken.

THE COURT: And she said it was before December 15th and doesn’t know the exact date. Next question.

[HUSBAND’S COUNSEL]: I’m asking her to check on her cell phone what is the exact date.

THE COURT: That is not a question. That is a command to get - - to her to get off the stand and to go into her phone at a table and start looking for something, and that is not what we’re doing at an emergency hearing. Next question.

Subsequently, Husband took the stand. As to why he filed his petition for a protective order, he testified that, after Wife had called the police following the December 15 incident, Wife “became more confident” and started “harassing [him] again and again” and he no longer felt “safe at home” and, having been “wrongly accused,” he felt the need to seek protection. He asserted that Wife had “threatened” him “before many times” that she would call the police, have him thrown out of the house, and take Child to Russia with her.

With regard to the photos Wife submitted purporting to show injuries she sustained on December 15, Husband testified that he “absolutely” believed that the photos were not taken on December 15. And he testified that the video Wife posted on TikTok on December 24, which does not reflect any “marks” on Wife’s face, was filmed by Wife on December 20 when they were both home. As for Wife’s photo of the dirty crib sheet, Husband testified that he believed that the photo had been altered. He acknowledged that there were “some stains on the sheet[,]” but claimed that Child had “burped” just before they were leaving for court and he did not have time to change the sheet.

Husband admitted that he owned a “shotgun,” which he claimed he had legally purchased “for protection of the house[.]” He kept it by his bed initially, but later moved it to his walk-in closet. He denied ever threatening Wife with the gun.

His story of the July 2022 incident differed from Wife’s. Husband related that he was sleeping, with the gun beside his bed, when he woke to use the bathroom. Upon returning, he noticed the gun was gone and was worried that someone had broken into the

home and stolen it. After finding the gun in Wife’s bedroom, he went searching for her and when he didn’t find her inside the home, he “thought that she might be hiding in the garage.” He placed the gun on the washing machine and entered the garage, finding Wife there hiding behind the car and “barricaded” with “paper bags for garden refuse.” The “loud sounds” heard on the video was him moving the bags away. Husband related that he “politely and calmly asked [Wife] to return home” and she followed him into the house and when he picked up the gun Wife started screaming. Wife, according to Husband, then accused him of hurting her finger, but he had “no clue” what she meant. He claimed that the gun was “unloaded” and he never had his finger on the trigger. When asked why he thought Wife had been hiding in the garage, Husband answered that he suspects that he “was being set[] up . . . for the purpose of [the] video.”

On cross-exam by Wife’s counsel, Husband testified that he had purchased the gun because he “was afraid for [his] life after having a conflict with [his] business partners” in 2021. He admitted that he kept the gun by his bed, but denied it was loaded. He explained that the gun has a magazine which holds five cartridges and that he kept the magazine attached to the gun. Although the magazine was “loaded,” he said he did not keep a cartridge in the “chamber.” (In his view, “‘loaded’ means something in the chamber.”)

Husband admitted that Wife’s video of the July 2022 incident depicted him holding the gun and Wife stating that she took the gun from his room so that he wouldn’t kill her, but again claimed that he believed Wife “was trying to provoke” and “set [him] up exactly for this video.” He confirmed that he took Wife to the hospital the next day where she

received treatment for her finger, but adamantly denied any knowledge as to how her finger was injured.

The only other witness to testify was Andrii Trofymenko, a friend who testified on Husband’s behalf. Mr. Trofymenko had known Husband about eight years. On two occasions, November 2022 and November 2023, Husband had asked to stay a night at his home. In November 2023, when Husband appeared at Mr. Trofymenko’s house, Husband showed him “a lot of scratches and kind of like bruises on his body.” On that occasion, Mr. Trofymenko testified that Husband related that he could not stay at his own home because Wife was “punching him.”

After closing statements by counsel, the court recessed and took the time to again watch all the videos that the parties had submitted into evidence.

#### Court’s Findings & Rulings

Following the recess, the court resumed the bench and apologized for taking “much longer” than anticipated but stated that she “wanted to watch every last video” submitted into evidence, which she had done. The court thereafter gave a thorough and specific recitation of its findings.

The court reviewed that both Husband and Wife had sought protective orders, claiming abuse by the other spouse. In that situation, the court noted, Family Law Article § 4-506(c)(3) applies and provides that “the judge may issue mutual protective orders if the judge finds by a preponderance of the evidence that mutual abuse has occurred.” Md. Code Ann. (1984, 2019 Repl. Vol.), Fam. Law § 4-506(c)(3)(i). In addition, the statute states that mutual protective orders may be issued “only if the judge makes a detailed

finding of fact that: 1. both parties acted primarily as aggressors; and 2. neither party acted primarily in self-defense.” Fam. Law § 4-506(c)(3)(ii).

The court also related that it had reviewed pertinent case law and cited two decisions by the Supreme Court of Maryland that it found particularly instructive in this case. Quoting the decision in *Coburn v. Coburn*, 342 Md. 244, 252 (1996), the court stated that “the primary goals of the [domestic abuse] 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.”

In assessing whether a petitioner seeking a protective order has been the subject of abuse—as that term is defined in the protective order statute<sup>7</sup>—the court stated it was guided by the decision in *Katsenelenbogen v. Katsenelenbogen*, 365 Md. 122 (2001) and read the following passage from that decision:

A person who has been subjected to the kind of abuse defined in [Fam. Law] § 4-501(b) may well be sensitive to non-verbal signals or code words that have proved threatening in the past to that victim but which someone else, not having that experience, would not perceive to be threatening. The reasonableness of an asserted fear emanating from that kind of conduct or communication must be viewed from the perspective of the particular victim. Any special vulnerability or dependence by the victim, by virtue of physical, mental, or emotional condition or impairment, also must be taken into account.

365 Md. at 139.

---

<sup>7</sup> “Abuse,” for purposes of the domestic violence statute, is defined, in pertinent part, as “an act that causes serious bodily harm” or “an act that places a person eligible for relief in fear of imminent serious bodily harm[.]” Fam. Law § 4-501(b)(1)(i)–(ii).

Guided by these legal provisions and principles, the court turned to its findings in this case. The court recounted each alleged incident of abuse testified to in court and summarized what it found on the videos which it had rewatched during the recess. In short, the court credited Wife’s testimony and did not credit Husband’s testimony on salient points. In fact, the court found Wife “very credible” based on her demeanor while testifying, “both in what she said and how she said it.”

The court found that Wife was afraid of Husband, noting that in the July 2022 video it could see “fear in her eyes” and heard “fear in her voice. Her voice was shaky. It sounded like she was crying.” The court observed that that video also depicted the “menacing” looking shotgun Husband carried through the house when searching for Wife during that incident. The court credited Wife’s testimony that she had heard Husband loading the gun, and that is why she was so fearful. The court also found that Husband had carried the gun from upstairs to downstairs when searching for Wife for the purpose of intimidating her. The court did not credit Husband’s testimony that he did not know how Wife hurt her finger in the July 2022 incident, and credited Wife’s testimony that her finger was broken when Husband grabbed her by the hands to pull her out of the bathroom where she had been hiding.

In reviewing the other videos—recorded by Husband and submitted into evidence by him—the court found that, in all instances, Husband appeared calm and steady. For example, in an October 13 video, Wife is seen holding Child and speaking and “[t]he video is held very still and very focused on her” and “then there’s a pause, and she hits something



with a bottle.” Yet, the court noted, “[t]here’s no reaction from him . . . not even an audible anything . . . like ah.”

In addressing other videos recorded by Husband, the court again noted how “calm” Husband was and found that “the calm videoing for such lengths of time to be wholly inconsistent with someone who’s in fear of someone else.” Rather, the court found “it [to be] consistent with a desire to build a . . . custody case.” The court also found Husband’s failure to call the police during Wife’s alleged attacks of him to be inconsistent with someone who was fearful of experiencing imminent harm. And the court found significant that Wife, in most of these videos recorded by Husband, was crying (and sometimes hysterical) whereas Husband is “calm” and “keeps on videoing.” Moreover, the court was unable to discern what Husband was doing behind the camera, such as whether he could have been sending non-verbal signals to Wife that she might have perceived as threatening.

Although there were some instances captured on the videos where Wife appeared to throw something or slap her hands in Husband’s direction, the court nonetheless concluded that there was insufficient evidence that Wife was the primary aggressor or was inflicting abuse upon Husband. The court was not persuaded that “being that calm and continuing to video is consistent with someone who has been attacked.” In a November 11 video, for example, the court noted that Husband never “sound[s] afraid” or “upset” and the camera never falls. In sum, the court repeatedly found Husband’s “behavior inconsistent with being the victim in these” incidents. On the other hand, Wife, the court concluded, was “afraid, especially in light of what happened [in July 2022] with that firearm.”

The court observed that, during the final protective order hearings, Husband came across as “someone who is articulate, speaks English, has lived in the United States for many years and, from observing his behavior in court, is a very assertive person.” The court found that he gave “very strong” answers when testifying and corrected counsel “on cross-examination when he thought that counsel was wrong.” The court noted that Husband also corrected the court appointed interpreter and made comments to the court’s law clerk regarding the playing of the videos. The court found Husband to be no “shrinking violet” but rather “very strong-willed,” having “no problem speaking out, speaking his mind, and taking charge.” Consequently, the court found Husband’s failure to call the police during alleged attacks by Wife to be significant and did not credit his testimony that he failed to do so out of fear that he would be falsely accused of something.

Moreover, the court found that Wife had a “special vulnerability and dependence[.]” Physically, the court noted that Wife “is an extremely slight woman . . . probably five two and 110 pounds at the max” and Husband “is double that[.]” The court also concluded that there was an “extraordinary imbalance of power” in the relationship. The court explained:

On the one hand, [Husband] is fully fluent in English. He makes no English errors and has only a slight accent. He works at NIH, and . . . he’s the one that brought her here to the United States. He’s the one that is entrenched in American society. He makes good money. And she, on the other hand, speaks no English and has no job, has no money, and stated she has no family or friends here and didn’t even know how to go to the police and had to Google how to do certain things.

The court found that Wife had suffered abuse on December 15 and was unpersuaded that Husband was not the primary aggressor in the various incidents and unpersuaded that Wife was not acting in self-defense. In short, the court concluded that “all of [Husband’s]

behavior” in the incidents captured on video was “inconsistent with [him] being the victim in these cases.” Again, the court credited Wife’s testimony and not Husband’s, noting for example that her testimony about the December 15 incident was “a much more detailed account of what happened” and she was the one who had called the police, whereas Husband “was very brief about that incident and didn’t give many details at all.”

The court denied Husband’s request for a protective order and granted Wife’s. Among other things, the court ordered that Husband stay away from Wife and remain absent from the marital home. The protective order remains in effect until December 28, 2024.

#### **STANDARD OF REVIEW**

A petitioner seeking a final protective order must show “by a preponderance of the evidence that the alleged abuse has occurred[.]” Fam. Law § 4-506(c)(1)(ii); *C.M. v. J.M.*, 258 Md. App. 40, 56 (2023). “Preponderance of the evidence means more likely than not.” *C.M.*, 258 Md. App. at 56-57 (cleaned up). When reviewing the issuance of a final protective order, we accept the trial court’s findings of fact unless they are clearly erroneous. *See* Md. Rule 8-131(c); *Barton v. Hirshberg*, 137 Md. App. 1, 21 (2001). “Under the clearly erroneous standard, this Court does not sit as a second trial court, reviewing all the facts to determine whether an appellant has proven his case.” *Webb v. Nowak*, 433 Md. 666, 680 (2013) (cleaned up). “Nor is it our function to weigh conflicting evidence.” *Goss v. C.A.N. Wildlife Tr., Inc.*, 157 Md. App. 447, 456 (2004). Rather, we “must consider evidence produced at the trial in a light most favorable to the prevailing party and if substantial evidence was presented to support the trial court’s determination,

it is not clearly erroneous and cannot be disturbed.” *Ryan v. Thurston*, 276 Md. 390, 392 (1975). We defer to the trial court’s credibility determinations because it has “the opportunity to gauge and observe the witnesses’ behavior and testimony during the trial.” *Barton*, 137 Md. App. at 21 (cleaned up). “As to the ultimate conclusion, however, 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

### Husband’s “Discovery” Request

Husband asserts that the court abused its discretion by denying his “request for discovery” and maintains that the “emergency nature of the proceeding deprived [him] of a fair opportunity to examine [Wife’s] evidence and adequately prepare for the hearing.” He claims that his “multiple requests for discovery . . . would have yielded crucial impeachment evidence” that “would have conclusively demonstrated [Wife’s] claims were fabricated[.]” He also maintains that the court “erred in not giving proper weight to lack of authentication of submitted evidence.” Citing *Napue v. Illinois*, 360 U.S. 264 (1959), Husband states that “a prosecutor’s knowing use of false testimony violates due process, even if the false testimony only relates to the credibility of a witness rather than direct evidence of guilt.” He asserts that, “[b]y preventing [him] from obtaining proof that [Wife] fabricated evidence about her injuries, the court’s ruling violated *Napue*[.]”

Specifically, Husband maintains that the photographs submitted by Wife showing a mark on the side of her nose and bruises on her body which she testified she sustained during the December 15 incident “were actually from an earlier, unrelated incident” and

he claims that Wife “misrepresented” the dates the photos were taken. He also mentions the TikTok video he submitted into evidence and the court’s refusal to have Wife, during Husband’s cross-examination of her, delve into her iPhone and produce the time stamps of when the video was recorded. (At the hearing, in his rebuttal direct examination, Husband testified that Wife recorded the TikTok video on December 20.)

First, *Napue* is inapplicable. The matter before us was not a criminal case prosecuted by the State or a proceeding involving State agents as witnesses, but cross petitions for *civil* protective orders filed first by Husband and then by Wife. *See Coburn, supra*, 342 Md. at 252 (“The [domestic violence] statute grants courts the power to issue civil protection orders, which can prohibit a perpetrator of domestic violence from, among other things, abusing, contacting or harassing the victim.”).

In arguing that the “emergency nature of the proceeding” did not give him sufficient time to prepare his case, Husband ignores the fact that he filed his petition for a protective order on December 19, three days prior to Wife filing her petition. Husband (and Wife) specifically sought relief pursuant to the domestic violence statute set forth in § 4-501 et seq. of the Family Law Article. “Through [this] statute, victims of domestic abuse are offered access to the judicial system to seek *emergency* relief and protection from their abusers.” *Coburn*, 342 Md. at 252 (emphasis added). The statute is intended “to protect and ‘aid victims of domestic abuse by providing an *immediate* and effective’ remedy.” *Id.* (emphasis added) (quoting *Barbee v. Barbee*, 311 Md. 620, 623 (1988)). Thus, Husband can hardly complain that he did not have sufficient time to prepare his case because the court proceeded expeditiously, as the statute he invoked so intends.

As for his specific complaints, Wife testified that the photos she submitted into evidence showing a mark on the side of her nose and bruises on her body were taken following the December 15 incident. Husband did not object when the photos were moved into evidence. It was only later, during cross-examination, that Husband’s counsel attempted to discredit her testimony as to the date the photographs were taken. After several questions along these lines, Wife testified that Husband had logged into her iCloud account the day before (December 27) and “everything was deleted[.]” When asked to respond “yes or no,” to the statement “you do not have photographs with a time stamp saying December 15, 2023[.]” she answered: “He removed - - yes.” In his rebuttal direct examination, when Husband was asked whether he believed these photos were taken on December 15, he replied: “Absolutely not.” He also denied that the photos depicted how Wife actually looked on that day.

It was for the circuit court—not this Court on appeal—to weigh the conflicting evidence and to assess the credibility of the witnesses. As for any “lack of authentication,” Husband made no objection on that ground when Wife’s December 15 photos were introduced or submitted into evidence and, therefore, any authentication issue was not preserved for appellate review.

As for the TikTok video Wife posted on December 24, it was Husband who submitted that into evidence to establish that Wife had no marks on her face when the video was recorded. On cross-examination, Wife testified that, although she posted the TikTok video on December 24, she had recorded it prior to the December 15 incident. We discern no abuse of the court’s discretion in denying Husband’s request that Wife, in the midst of

her cross-examination, stop and search her phone for evidence to corroborate her testimony as to the date she recorded the TikTok video. An abuse of discretion will be found only when “no reasonable person would take the view adopted by the circuit court, or when the court acts without reference to any guiding rules or principles.” *Bord v. Baltimore Cnty.*, 220 Md. App. 529, 566 (2014) (cleaned up). “[W]here a trial court’s ruling is reasonable, even if we believe it might have gone the other way, we will not disturb it on appeal.” *Fontaine v. State*, 134 Md. App. 275, 288 (2000). We are not convinced that the court’s ruling was unreasonable.

#### The Court’s Credibility Determinations

In a detailed summary of its findings, the court repeatedly indicated that it found Wife’s testimony credible and Husband’s not so. On appeal, Husband maintains that the court erred in finding Wife credible. In support of his position, he claims: (1) Wife gave “inconsistent” and “irreconcilable versions” of the December 15 incident; (2) Wife was “judicially estopped from claiming self-defense” because she admitted that “she initiated the physical fight without justification”; (3) Wife failed to corroborate her claims of abuse with evidence, such as police documents or recordings of the abuse; (4) Wife’s description of the physical abuse she sustained on December 15 was “inconsistent and contradicted by the photographic evidence”; (5) the court disregarded Husband’s testimony of Wife’s “blackmail attempts”; and (6) the court failed to consider his “documented history” of Wife’s “aggression and violence” against him. All of the above, according to Husband, “severely undermined” Wife’s credibility and yet was overlooked by the court.

In essence, Husband is asking this Court to make our own credibility determination, which we decline to do. As always, we defer to the trial court’s credibility assessment because it has “the opportunity to gauge and observe the witnesses’ behavior and testimony during” the hearing. *Barton*, 137 Md. App. at 21 (cleaned up). It is clear from our review of the transcripts from the two-day hearing that the court did just that.

When Husband’s counsel requested the court to “take notice of the appearance” of Wife and the fact that she “does not have any marks” on her face, the court responded in pertinent part: “I’ve been observing both - - the physical appearances of both parties all day today and two days ago[.]” In announcing its findings, the court observed that, physically, Wife “is an extremely slight woman . . . probably five two and 110 pounds at the max” and Husband “double that[.]”

The court also observed the parties’ behavior in the courtroom and concluded that Husband “is a very assertive person”; was “very strong in his answers” to his counsel and even corrected counsel on cross-examination “when he thought that counsel was wrong.” From its observations, the court concluded that Husband is “not a shrinking violet” – noting that on occasion the court observed “the anger in his face when he got angry at the way” Wife’s counsel asked him questions. The court also described Husband as “very strong-willed,” pointing out that he corrected the court interpreter, spoke to the law clerk about how play the videos, and had “no problem speaking out, speaking his mind, and taking charge.”

In discussing Wife, the court noted that it had “watched her on the stand” and “watched her demeanor” and “found her credible both in what she said and how she said



it.” When discussing each of the videos submitted into evidence, the court observed that Husband’s recording of the incidents and his behavior during them was particularly “calm” and belied the notion that he was scared or fearful of Wife. The court observed in the videos that Wife was often crying or hysterical and there was “fear in her voice” and “fear in her eyes.”

We decline to disturb the court’s credibility determinations, as, unlike this Court, it had the opportunity to both hear the testimony and observe the parties and it is “not our role, as an appellate court, to second-guess the trial judge’s assessment of a witness’s credibility.” *Gizzo v. Gerstman*, 245 Md. App. 168, 203 (2020). We also decline to reweigh the evidence before the court.

#### Husband Abuser and Wife Victim

Where, as here, both parties file a petition for a protective order, the court may issue “mutual protective orders” if it finds by a preponderance of the evidence that “mutual abuse” occurred. Fam. Law § 4-506(c)(3)(i). “Abuse,” for purposes of the domestic violence statute, is defined, in pertinent part, as “an act that causes serious bodily harm” or “an act that places a person eligible for relief in fear of imminent serious bodily harm[.]” Fam. Law § 4-501(b)(1)(i)–(ii). To issue mutual final protective orders, the court must “make[] detailed finding[s] of fact that: 1. Both parties acted primarily as aggressors; and 2. Neither party acted primarily in self-defense.” Fam. Law § 4-506(c)(3)(ii).

The court found by a preponderance of the evidence that Husband had abused Wife. The court found that Wife had a “special vulnerability and dependence” based on several factors, including her inability to speak English, unemployment, lack of family and friends

in the United States, and her dependence on Husband. For reasons the court articulated, it concluded that the evidence did not support a finding that Wife abused Husband. The court found that the videos Husband submitted involved “constant calm videoing” on his part for significant lengths of time which the court concluded was “wholly inconsistent with someone who’s in fear of someone else.”

On appeal, Husband challenges the court’s findings and asserts that “critical video evidence . . . conclusively established [Wife] as the unprovoked aggressor in multiple violent assaults on [him].” He maintains that the “videos objectively depict [Wife] attacking [him] without justification, chasing him through the house, throwing objects at him, swinging scissors at him, and pushing him down the stairs as he tried to escape her rage.” In essence, Husband seems to argue that the court erred in finding that he abused Wife and/or erred in failing to find that Wife abused him.

Again, it is clear to us that the court carefully considered all the evidence before it (testimonial, photographic, and video) and was not persuaded that Wife was the primary aggressor based on, among other things, the calm, steady, and consistent manner in which Husband recorded the videos. The court also noted that, even where Wife appeared to throw something in Husband’s direction, Husband did not react but continued to calmly and steadily record her which the court concluded was inconsistent with someone who was in fear of imminent serious bodily harm.

Mindful of the Supreme Court’s opinion in *Katsenelenbogen, supra*, the court also considered Wife’s behavior in light of past incidents involving these parties and the imbalance of power in their relationship. The court credited Wife’s testimony regarding

the July 2022 incident involving the firearm and concluded that Wife was afraid of Husband. And of utmost significance, the court credited Wife’s testimony about the other incidents as well and found Husband’s testimony not credible. As our Supreme Court has stated, a trial court is entitled to “accept—or reject—*all, part, or none* of the testimony of any witness, whether that testimony was or was not contradicted or corroborated by any other evidence.” *Omayaka v. Omayaka*, 417 Md. 643, 659 (2011) (emphasis in the original).

In short, we are not convinced that the court’s findings that Wife suffered abuse and Husband did not were clearly erroneous or that the court abused its discretion in denying Husband’s petition for a protective order and granting Wife’s petition.

#### Wife’s Exclusive Use of the Marital Home

Husband challenges the provision in the final protective order which directed him to immediately vacate the marital home and prohibits him from entering the home during the one-year duration of the protective order. Claiming that he is the “sole legal owner” of the home and, therefore has a constitutionally protected property interest in it, he maintains that he was deprived of his property without due process. He asserts that he “did not receive any notice that the protective order could result in him being ordered to vacate a home that he solely owns, despite [Wife’s] name not being on the deed.”

“The core of due process is the right to notice and a meaningful opportunity to be heard.” *Roberts v. Total Health Care, Inc.*, 349 Md. 499, 509 (1998) (cleaned up). Due process “is a flexible concept that calls for such procedural protection as a particular situation may demand.” *Wagner v. Wagner*, 109 Md. App. 1, 24 (1996). “Stated another

way, due process merely assures *reasonable* procedural protections, appropriate to the fair determination of the particular issues presented in a given case.” *Id.* (emphasis in the original).

A protective order is not intended to punish the abuser, but is designed to prevent further harm to the victim. *Coburn*, 342 Md. at 252. “[O]nce a court has found from the evidence that abuse has occurred” and that a protective order is warranted, the court then focuses “on fashioning a remedy that is authorized under the statute and that will be most likely to provide that protection.” *Katsenelenbogen*, 365 Md. at 136-37.

The statute provides various remedies the court may order when granting a final protective order, including ordering the respondent to immediately vacate the home where the parties resided at the time of the abuse. Fam. Law § 4-506(d)(4). Before doing so, however, the court shall consider the following factors:

- (1) the housing needs of any minor child living in the home;
- (2) the duration of the relationship between the respondent and any person eligible for relief;
- (3) title to the home;
- (4) pendency and type of criminal charges against the respondent;
- (5) the history and severity of abuse in the relationship between the respondent and any person eligible for relief;
- (6) the existence of alternative housing for the respondent and any person eligible for relief; and
- (7) the financial resources of the respondent and the person eligible for relief.

Fam. Law § 4-506(h).

Here, the court awarded Wife temporary custody of Child, as authorized by Fam. Law § 4-506(d)(7). The court also awarded Wife temporary exclusive use and possession of the home recognizing that Wife had no other place to live, was unemployed, was

dependent financially on Husband, and had no family or relatives in the area. The court also determined that the home where the parties and Child had lived together was the best place for Child to reside. We are not persuaded that the court abused its discretion or that Husband was denied due process. *Katsenelenbogen*, 365 Md. at 137 (If the court, after considering the relevant factors, “believes that protection of the petitioner requires that the parties be physically separated and that the respondent vacate the home, it should not hesitate to order that relief[.]”). Title ownership is but one of seven factors for the court to consider and the Legislature did not indicate that title to the home is to be weighted more heavily than any other factor.

Moreover, the court did not deprive Husband of his ownership interest in the home, but after a hearing *temporarily* awarded Wife exclusive use and possession of it. Finally, the terms of a protective order are certainly subject to modification by the court, either after notice and a hearing pursuant to Fam. Law § 4-507 or as part of the parties pending divorce litigation.

In sum, we are not persuaded that the circuit court erred or abused its discretion in granting Wife’s petition for a protective order and denying Husband’s or in the remedy it fashioned to protect Wife from further abuse.

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