Affirmed and Opinion Filed August 30, 2022

In The
Court of Appeals
Fifth District of Texas at Dallas

No. 05-21-00278-CV

MOHAMMED TAHAR AMROUNI, Appellant
V.
SANA BHAKHRANI, Appellee

On Appeal from the 280th District Court
Harris County, Texas
Trial Court Cause No. 2021-03516

MEMORANDUM OPINION

Before Justices Partida-Kipness, Pedersen, III, and Nowell
Opinion by Justice Partida-Kipness

Appellant Tahar Mohammed Amrouni appeals from a family-violence protective order awarding appellee Sana Bhakhrani attorney's fees. In three issues, Amrouni challenges the sufficiency of the evidence, the trial court's alleged bias, and the absence of fact findings to support the attorney's fees. We affirm.

BACKGROUND[1]

Amrouni and Bhakhrani were married in 2016 and had a child in 2018 whom we will refer to as Sarah. As Bhakhrani described it, there was a pattern of escalating

[1]This case is before the court on transfer from the Fourteenth Court of Appeals in Houston pursuant to an order issued by the Supreme Court of Texas. *See* TEX. GOV'T CODE§ 73.001.

animosity in the later years of the marriage, with multiple incidents in which Amrouni was hostile and one incident in which he was violent with her.

One such confrontation took place on the morning of February 21, 2019. Bhakhrani hid Amrouni's keys so he would be forced to stay and talk about their marriage, and Amrouni grew angry with her, saying he needed to leave for work. Bhakhrani was breastfeeding Sarah on the couch when Amrouni took Sarah and went upstairs. Shortly thereafter, Bhakhrani heard a loud thud and her daughter crying. Amrouni reported Sarah had fallen off the bed and he needed to take her to the doctor. Bhakhrani would not give him his keys, so Amrouni walked a mile to the doctor's office with Sarah. When Bhakhrani later arrived at the doctor's, Amrouni cursed at her and refused to let her hold Sarah. The couple made amends later in the morning.

Another 2019 incident began when Amrouni was walking down the stairs and found Sarah's car seat obstructing the staircase. He threw the seat, and it landed on the other end of the sofa where Bhakhrani was sitting with Sarah.

In September 2019, Amrouni found out Bhakhrani was selling some household items online, and he began yelling at her. Bhakhrani went outside and locked herself in her car. According to Bhakhrani's testimony, Amrouni pounded on the car window and loudly told her to "get raped" and "get molested."

In December 2020, Bhakhrani was feeding Sarah breakfast, and Amrouni had the idea to give her green tea ice cream for dessert. Bhakhrani told him Sarah should

not eat it because it contained caffeine. According to Bhakhrani, he grew angry and threw the ice cream across the kitchen into the trash.

Another confrontation took place on January 1, 2021. Amrouni took his daughter to visit his parents and asked Bhakhrani not to come along. Bhakhrani nonetheless decided to come, which she testified angered Amrouni. After the visit, when Sarah was buckled into her father's car, Bhakhrani walked to her own car, got in, locked the door, and began secretly video-recording events on her cell phone. According to the video, Amrouni approached her driver's-side door, knocked on the door, tried to open it, and then asked her to unlock the door. She rolled the window down a bit and asked, "What do you need?" Amrouni asked her, "What are you afraid I'm gonna do? Why won't you open the door?" Bhakhrani replied, "Because of how you've been." Amrouni said, "What am I going to do? What, are you afraid of me?" Bhakhrani said, "A little bit, yes." Amrouni asked, "Do you think I'm going to hit you? I should, I think you deserve it. Maybe that's a language you understand, is it?" Amrouni said, "No." Bhakhrani asked, "Is beating a language you understand? Hm? Is it? I honestly don't even know what to do with you, what language you comprehend." From there, the video showed the parties discussing Amrouni's insistence he be allowed some personal space and time away from Bhakhrani at their therapist's recommendation, while Bhakhrani pleaded with him not to argue in front of their daughter.

The last incident, and the one involving violence toward Bhakhrani, took place on January 13, 2021. According to Bhakhrani's testimony, the couple's marriage counselling session went poorly. Amrouni was angry about what he perceived as Bhakhrani's secrecy and intrusions into his privacy, and he wanted to know where Sarah's social security card and birth certificate were. When they returned to their apartment after the session, she gave him the documents. She then began covertly recording an argument in which Amrouni repeatedly screamed obscenities at her and told her he hoped she would go bankrupt or die. He demanded she give up her key to his car, but Bhakhrani protested she did not know where it was. He stated he was leaving to pick up their daughter. Bhakhrani locked herself in the bathroom. Amrouni used a key to open the bathroom door, grabbed her purse, and ran downstairs. When he rifled through it, he found her phone was recording and said, "I knew it." Bhakhrani followed him downstairs and tried to grab for her phone. Amrouni used a sweeping kick to knock her feet out from under her, and she fell backwards onto the floor. When she stood and tried to grab the phone again, he repeated the kick, and she fell backwards. Bhakhrani stood and reached for the phone a third time, and he swept her legs once more. Amrouni then took her wallet and phone and started to leave. Bhakhrani followed him outside. Amrouni walked back inside, locking the door behind him. Bhakhrani used her keys to get back in. Amrouni took her keys and went outside once more, and she followed him. He walked back inside and locked the door, leaving her locked outside. Bhakhrani ran

to the apartment's security office and asked them to call police. Amrouni was arrested. Bhakhrani was left with bruising and pain from the falls. Amrouni filed for divorce after this confrontation.

Bhakhrani sought a protective order the week after their last fight. Amrouni was the only other fact witness at trial in February 2021. He swore he had never yelled at or harmed Sarah, and though he admitted taking Bhakhrani to the ground during their last fight was "reprehensible" and "inexcusable," he maintained he did not intend to hurt her. As to the other incidents of anger or throwing things, he denied some of them occurred as she described and admitted others occurred but offered explanations for his behavior.

Based on the evidence described above, the trial court rendered a final protective order limiting Amrouni's ability to contact her or Sarah for two years. The order awarded Bhakhrani $24,449.50 in attorney's fees. In support of the order, the trial court issued findings of fact and conclusions of law in which it determined family violence had occurred and was likely to occur in the future. The court found Bhakhrani to be a credible witness but deemed Amrouni's testimony not credible. Amrouni appeals.

STANDARD OF REVIEW

We review the sufficiency of the evidence supporting a protective order under the same standard used in evaluating the evidence to support a jury verdict. *Dolgener v. Dolgener*, No. 14-19-00645-CV, --S.W.3d--, 2021 WL 3883619, at *9 (Tex.

App.—Houston [14th Dist.] Aug. 31, 2021, no pet.); *accord Pleasant v. Black*, No. 05-20-01040-CV, 2022 WL 807190, at *4 (Tex. App.—Dallas Mar. 17, 2022, no pet.) (mem. op.). In reviewing a legal sufficiency challenge, we consider whether the evidence at trial would enable a reasonable and fair-minded factfinder to reach the verdict under review. *City of Keller v. Wilson*, 168 S.W.3d 802, 827 (Tex. 2005). Evidence is legally insufficient to support a finding only when (1) the record bears no evidence of a vital fact, (2) the rules of law or of evidence bar the court from giving weight to the only evidence offered to prove a vital fact, (3) the evidence offered to prove a vital fact is no more than a mere scintilla, or (4) the evidence establishes conclusively the opposite of a vital fact. *Shields LP v. Bradberry*, 526 S.W.3d 471, 480 (Tex. 2017). We consider evidence favorable to the finding if a reasonable factfinder could and disregard contrary evidence unless a reasonable factfinder could not. *Cent. Ready Mix Concrete Co. v. Islas*, 228 S.W.3d 649, 651 (Tex. 2007). All the record evidence must be considered in the light most favorable to the party in whose favor the verdict has been rendered, and every reasonable inference deducible from the evidence is to be indulged in the prevailing party's favor. *Gunn v. McCoy*, 554 S.W.3d 645, 658 (Tex. 2018).

When reviewing a factual sufficiency challenge, a court of appeals sets aside the finding only if, after considering and weighing all of the evidence in the record pertinent to the finding, it determines the credible evidence supporting the finding is so weak, or so contrary to the overwhelming weight of all the evidence, that the

answer should be set aside and a new trial ordered. *Crosstex N. Tex. Pipeline, L.P. v. Gardiner*, 505 S.W.3d 580, 615 (Tex. 2016). The factfinder is the sole judge of the credibility of the witnesses and the weight to be given to their testimony. *Vives v. Gersten*, No. 05-13-01463-CV, 2014 WL 7498016, at *3 (Tex. App.—Dallas Dec. 29, 2014, no pet.) (mem. op.) (citing *GTE Mobilnet of S. Tex. LP v. Pascouet*, 61 S.W.3d 599, 615–16 (Tex. App.—Houston [14th Dist.] 2001, pet. denied)). We will not substitute our judgment for the trial court's merely because we might reach a different conclusion. *Id.*

ANALYSIS

I. Sufficiency of the Evidence

For convenience, we begin with Amrouni's second issue, in which he challenges the legal and factual sufficiency of the evidence to support the protective order.

"The purpose of the protective order statute is not to remedy past wrongs or punish prior criminal acts; rather, it seeks to protect the applicant and prevent future violence." *Roper v. Jolliffe*, 493 S.W.3d 624, 634–35 (Tex. App.—Dallas 2015, pet. denied). A trial court shall render a protective order if it finds family violence has occurred and is likely to occur in the future. TEX. FAM. CODE §§ 81.001, 85.001. "Family violence" includes the following:

> [A]n act by a member of a family or household against another member of the family or household that is intended to result in physical harm, bodily injury, assault, or sexual assault or that is a threat that reasonably

> places the member in fear of imminent physical harm, bodily injury, assault, or sexual assault, but does not include defensive measures to protect oneself[.]

Id. § 71.004(1). "In cases involving family violence protective orders, evidence that a person has engaged in abusive conduct in the past permits an inference that the person will continue this behavior in the future." *Matter of Frasure*, No. 05-13-01667-CV, 2015 WL 459223, at *6 (Tex. App.—Dallas Feb. 4, 2015, no pet.) (mem. op.). "Oftentimes, past is prologue; therefore, past violent conduct can be competent evidence which is legally and factually sufficient to sustain the award of a protective order." *Vives*, 2014 WL 7498016, at *4 (quoting *Teel v. Shifflett*, 309 S.W.3d 597, 604 (Tex. App.—Houston [14th Dist.] 2010, pet. denied)).

As described above, Bhakhrani testified to a pattern of increasingly hostile and threatening behavior in the later years of her marriage with Amrouni. According to Bhakhrani's testimony, some incidents involved obscenity-laden diatribes while he pounded on the door or window after Bhakhrani retreated to locked cars or bathrooms to avoid Amrouni's anger. Other incidents, she told the trial court, involved him throwing objects seemingly at or near Bhakhrani and Sarah. Finally, this pattern fully blossomed into violence on the last day of the parties' relationship. It is undisputed Amrouni kicked Bhakhrani to the ground three times in a heated confrontation, after which he took her phone, wallet, and keys and locked her out of their apartment.

Amrouni accepted responsibility for this final episode and the violence it involved, but he disputed Bhakhrani's account of the other incidents and offered context to explain these incidents. However, the trial court deemed his testimony not credible, and it found Bhakhrani's testimony to be credible instead. The trial court is the sole judge of witness credibility in this arena, and protective order cases can be and often are resolved on the basis of credibility determinations. *See, e.g.*, *Mahmoud v. Jackson*, No. 05-21-00302-CV, 2022 WL 2167683, at *3 (Tex. App.—Dallas June 16, 2022, no pet. h.) (mem. op.) ("The trial court, as the factfinder and judge of witness credibility, was free to believe appellee's testimony regarding their abusive relationship."); *Hightower v. Pearl*, No. 05-20-00647-CV, 2022 WL 842745, at *3 (Tex. App.—Dallas Mar. 22, 2022, no pet.) (mem. op. on reh'g) ("The trial court was free to believe Pearl's testimony and disbelieve Hightower's."); *Matter of Frasure*, 2015 WL 459223, at *6 (similar).

Taken together, this evidence is legally and factually sufficient to support the protective order, as our precedent shows. We have cited a case with approval in which the Tyler Court of Appeals upheld a protective order on roughly analogous facts, at least in terms of the number and nature of confrontations: *"*even though father never threatened [the] mother or children's lives," the Tyler court found sufficient evidence in the mother's testimony "regarding one incident of physical abuse toward her, as well as evidence he threatened to 'get back at' mother" and "was verbally abusive." *See In re L.J.H.*, No. 05-21-00183-CV, 2021 WL 4260769,

at *17 (Tex. App.—Dallas Sept. 20, 2021, no pet.) (mem. op.) (summarizing *Maples v. Maples*, 601 S.W.3d 23, 27 (Tex. App.—Tyler 2020, no pet.)). Consistent with this precedent, we overrule Amrouni's second issue.

II. Judicial Bias

We next take up Amrouni's first issue, in which he asserts the judge who heard this case, the Honorable Barbara Stalder of the 280th District Court, was biased against him. According to Amrouni, "[t]his bias stems from a deep-seated favoritism of protective order applicants and antagonism toward protective order respondents." Amrouni bases his allegation of partiality on the record of the hearing and a number of documents attached to his appellate brief.

Without expressing any opinion on the potential merit of his contentions, the record reveals Amrouni did not bring his complaint to the trial court's attention through a verified motion to recuse. *See* TEX. R. CIV. P. 18a. "Complaints that concern recusal can be waived if the party seeking recusal fails to file an appropriate motion within the time required by rule of civil procedure 18a." *PS Royal Servs. Grp. LP v. Fisher*, No. 05-17-01139-CV, 2019 WL 3543575, at *5 (Tex. App.—Dallas Aug. 5, 2019, pet. denied) (mem. op.). We have held the procedural requirements for recusal are mandatory and filing an improper motion or no motion at all will waive the issue on appeal. *See id.*; *Vodicka v. A.H. Belo Corp.*, No. 05-17-00728-CV, 2018 WL 3301592, at *9 (Tex. App.—Dallas July 5, 2018, pet. denied) (mem. op.). This is no less true when the complaint concerns a ground for recusal,

such as judicial bias, rather than the denial of recusal per se. *See Hightower*, 2022 WL 842745, at *4; *Coyne v. Allstate Ins. Co.*, No. 05-11-01378-CV, 2013 WL 2146537, at *1 (Tex. App.—Dallas May 15, 2013, no pet.) (mem. op.) ("Grounds for a trial judge's recusal can be waived.").

Because this is a transfer case, we apply the precedent of the Fourteenth Court of Appeals to the extent it differs from our own. *See* TEX. R. APP. P. 41.3. The Fourteenth Court has recently softened its stance on imperfections within a motion to recuse, citing changes to the rule governing recusal motions, *see In re Marshall*, 515 S.W.3d 420, 422 (Tex. App.—Houston [14th Dist.] 2017, orig. proceeding), but its position on the outright failure to file a motion to recuse remains the same as our own, *see Vasudevan v. Vasudevan*, No. 14-14-00765-CV, 2015 WL 4774569, at *3 (Tex. App.—Houston [14th Dist.] Aug. 13, 2015, no pet.) (mem. op.) ("To the extent [appellant] contends the trial judge should have recused himself, by failing to file a motion to recuse, [appellant] did not preserve his complaint for appellate review."); *Barkley v. Tex. Windstorm Ins. Ass'n*, No. 14-11-00941-CV, 2013 WL 5434171, at *3 (Tex. App.—Houston [14th Dist.] Sept. 26, 2013, no pet.) (mem. op. on reh'g) ("The record contains no motion to recuse Judge Criss. Accordingly, appellant has failed to preserve any error for review.").

Because Amrouni filed no motion to recuse, he has waived his issue concerning judicial bias. *See* TEX. R. APP. P. 33.1; *Hightower*, 2022 WL 842745, at *4.

III. Absence of Findings on Attorney's Fees

We end with Amrouni's third issue, in which he challenges the award of attorney's fees. Amrouni asserts two reasons why the fees award should be reversed.

First, relying on Rule 299 of the Texas Rules of Civil Procedure, Amrouni maintains the trial court's failure to make findings as to the fee award is fatal to the award itself. The trial court issued findings of fact and conclusions of law in support of the protective order itself, but it did not include any findings or conclusions with respect to attorney's fees. Amrouni argues Rule 299 prohibits this Court from implying findings of fact to support the fees award because the trial court entirely omitted the fees award from its findings. *See* TEX. R. CIV. P. 299 ("The judgment may not be supported on appeal by a presumed finding upon any ground of recovery or defense, no element of which has been included in the findings of fact."). We disagree.

The trial court "may assess reasonable attorney's fees against the party found to have committed family violence . . . as compensation for the services of a private or prosecuting attorney or an attorney employed by the Department of Family and Protective Services." TEX. FAM. CODE § 81.005(a). "In setting the amount of attorney's fees, the court shall consider the income and ability to pay of the person against whom the fee is assessed." *Id.* § 81.005(b). We review the trial court's award of attorney's fees in a protective order proceeding for an abuse of discretion. *Dolgener*, 2021 WL 3883619, at *17 (citing *Sylvester v. Nilsson*, No. 14-19-00901-

CV, 2021 WL 970924, at *6 (Tex. App.—Houston [14th Dist.] Mar. 16, 2021, no pet.) (mem. op.)).

Section 81.005(a) is a discretionary statute because it provides the trial court "may" assess attorney's fees; such an award is not required. *See*, *e.g.*, *Keever v. Finlan*, 988 S.W.2d 300, 306–07 (Tex. App.—Dallas 1999, pet. dism'd). Under a discretionary statute, findings of fact and conclusions of law are neither appropriate nor required. *Id.* Because Bhakhrani sought attorney's fees under a discretionary statute, the trial court was not required to file findings of fact and conclusions of law with respect to the fees award. Rule 299, therefore, does not apply under these facts, and the trial court was not required to issue findings and conclusions concerning the fee award.

Moreover, precedent from the Fourteenth Court dictates we overrule Amrouni's challenge to the award based on a lack of findings. *See Laufer v. Gordon*, No. 14-18-00744-CV, 2019 WL 6210200, at *5 (Tex. App.—Houston [14th Dist.] Nov. 21, 2019, no pet.) (mem. op.). After the court files original findings of fact and conclusions of law, any party may file with the clerk of the court a request for specified additional or amended findings or conclusions. TEX. R. CIV. P. 298. "If the trial court's original findings do not include any findings on a ground of recovery or defense, . . . then the party relying on the ground of recovery or the defense must request additional findings of fact in proper form or the ground is waived." *Laufer*, 2019 WL 6210200, at *5 (quoting *Howe v. Howe*, 551 S.W.3d 236, 248 (Tex.

App.—El Paso 2018, no pet.)); *see also Smith v. Smith*, 22 S.W.3d 140, 149 (Tex. App.—Houston [14th Dist.] 2000, no pet.). Here, Amrouni failed to request additional findings on his inability-to-pay defense. As a result, he cannot rely on the lack of an express specific finding as a ground for reversal. *Laufer*, 2019 WL 6210200, at *5; *see also Smith*, 22 S.W.3d at 149 ("Failure by a party to request additional or amended findings or conclusions waives the party's right to complain on appeal about the presumed finding."); *Howe*, 551 S.W.3d at 248 ("the failure by a party to request additional amended findings or conclusions waives the party's right to complain on appeal about the presumed finding"); *Pagare v. Pagare*, 344 S.W.3d 575, 581 (Tex. App.—Dallas 2011, pet. denied) (same) (citing *Smith*).

Under this record and applying the precedent of the Fourteenth Court, we conclude the absence of findings, on the fees award generally or specifically as to Amrouni's ability to pay the award, does not compel us to vacate the award. We overrule Amrouni's challenge to the fee award on the basis of a lack of findings and conclusions.

Amrouni next argues the fee award should be reversed because the evidence established he had no ability to pay the fees. We again disagree.

The Fourteenth Court "has held that [§] 81.005 'creates a divided burden of proof on the issue of the amount of attorney's fees to be assessed in a family violence protective order case.'" *Dolgener*, 2021 WL 3883619, at *17 (quoting *Ford v. Harbour*, No. 14-07-00832-CV, 2009 WL 679672, at *6 (Tex. App.—Houston [14th

Dist.] Mar. 19, 2009, no pet.) (mem. op.)). Bhakhrani, as the applicant for a family violence protective order that included a request for attorney's fees, had the initial burden to request and provide competent evidence proving she incurred reasonable attorney's fees as a result of applying for and prosecuting her application for a protective order. *See* TEX. FAM. CODE § 81.005(a); *Dolgener*, 2021 WL 3883619, at *17; *Sylvester*, 2021 WL 970924, at *8. In response, Amrouni was obligated to provide evidence addressing his ability to pay the attorney's fees sought by Amrouni. *See* TEX. FAM. CODE § 81.005(b); *Dolgener*, 2021 WL 3883619, at *17; *Sylvester*, 2021 WL 970924, at *8.

In support of her request for attorney's fees, Bhakhrani's counsel testified to his attorney's fees and those of his firm and submitted detailed billing records to support his opinion that Bhakhrani incurred $24,449.50 in reasonable and necessary attorney's fees, costs, and expenses as a result of the legal representation. Amrouni's burden under section 81.005(b) was not to deny the fees incurred by Bhakhrani, but to avoid being assessed some or all of those fees because of an independent reason, such as his inability to pay. The Fourteenth Court treats that burden as being "in the nature of an affirmative defense." *Dolgener*, 2021 WL 3883619, at *17 (citing TEX. FAM. CODE § 81.005(a); and *Sylvester*, 2021 WL 970924, at *8); *see also Ford*, 2009 WL 679672, at *6 (noting that this division of the burden of proof also makes logical sense because "it imposes the burden of proof on the party with the best access to the required information"). Therefore, Amrouni, in seeking the trial court's denial

of an attorney's fee award to Bhakhrani, had the burden to come forward with evidence of his inability to pay. *Dolgener*, 2021 WL 3883619, at *17.

Amrouni's evidence on his inability to pay was conflicting. Although he presented evidence through bank records of a lack of liquid assets and no income, he also testified his parents were paying his legal fees and allowing him to live in their home without expense. Evidence also showed Amrouni was in the process of starting a new business he believed would begin generating income within a couple of months. An abuse of discretion does not occur when the trial court bases its decision on conflicting evidence. *LasikPlus of Tex., P.C. v. Mattioli*, 418 S.W.3d 210, 216 (Tex. App.—Houston [14th Dist.] 2013, no pet.). Under this record, we conclude the trial court did not abuse its discretion by awarding Bhakhrani attorney's fees. We overrule Amrouni's third issue and affirm the trial court's award of fees.

CONCLUSION

For the foregoing reasons, we conclude the evidence was legally and factually sufficient to support the protective order, we reject Amrouni's allegations of judicial bias, and we overrule his challenges to the fee award. Having overruled Amrouni's appellate issues, we affirm the trial court's protective order.

/Robbie Partida-Kipness/
ROBBIE PARTIDA-KIPNESS
JUSTICE

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Court of Appeals
Fifth District of Texas at Dallas

JUDGMENT

MOHAMMED TAHAR AMROUNI, Appellant	On Appeal from the 280th District Court, Harris County, Texas Trial Court Cause No. 2021-03516.
No. 05-21-00278-CV V.	Opinion delivered by Justice Partida-Kipness. Justices Pedersen, III and
SANA BHAKHRANI, Appellee	Nowell participating.

In accordance with this Court's opinion of this date, the trial court's March 8, 2021 Final Protective Order is **AFFIRMED**.

It is **ORDERED** that appellee SANA BHAKHRANI recover her costs of this appeal from appellant MOHAMMED TAHAR AMROUNI.

Judgment entered this 30th day of August 2022.