

IN THE SUPREME COURT OF THE STATE OF DELAWARE

SHANNON RUARK,	§
	§
Petitioner Below-	§ No. 175, 2003
Appellant,	§
	§
v.	§ Court Below—Family Court
	§ of the State of Delaware,
ROBIN RUARK,	§ in and for Sussex County
	§ File No. CS02-04824
Respondent Below-	§ Petition No. 02-35991
Appellee.	§

Submitted: August 15, 2003
Decided: October 21, 2003

Before **BERGER, STEELE** and **JACOBS**, Justices

ORDER

This 21st day of October 2003, upon consideration of the briefs on appeal and the record below, it appears to the Court that:

(1) The petitioner-appellant, Shannon Ruark (“Wife”), filed an appeal from the Family Court’s March 6, 2003 order affirming a commissioner’s order dated December 26, 2002, which denied her petition for an order of protection from abuse (“PFA”). We find no merit to the appeal. Accordingly, we AFFIRM.

(2) On December 10, 2002, Wife filed a PFA petition against her husband, Robin Ruark (“Husband”). After a hearing on December 26, 2002, at which both parties were represented by counsel, the Family Court commissioner

denied Wife's petition. The Family Court subsequently affirmed the commissioner's order.

(3) In this appeal, Wife claims the Family Court erred by affirming the commissioner's finding that Wife did not prove by a preponderance of the evidence that Husband had committed an act of "abuse" under the statutory definition¹ and, therefore, was not entitled to a PFA order.

(4) At the hearing before the commissioner, Wife testified that, on December 7, 2002, Husband came home and became angry when he discovered the door was locked. According to Wife, he spit on her, told one of the children that she was gay, held her up against the wall with his hand around her neck, and hit her in the eye, dislodging her contact lens. Wife also testified that, on September 15, 2002, following a party at their house, Husband pointed his finger in her face and slapped her in the head. According to Wife, a friend of theirs named Joe Ketterman witnessed the incident and told Husband to stop because he was scaring Wife. Wife testified that Husband then overturned a table, breaking some beer bottles. Wife, finally, testified that she called "911" following the September and December incidents, resulting in criminal charges against Husband of disorderly conduct and offensive touching.

¹Under DEL. CODE ANN. tit. 10, § 1041(1), "abuse" consists of 8 separate types of conduct. Under DEL. CODE ANN. tit. 10, § 1041(2), "domestic violence" is "abuse" that is perpetrated by one member against another member of 2 protected classes.

(5) On cross-examination, Wife admitted that, during the December altercation, she “grazed” Husband’s jaw with her open hand after he grabbed her by the neck. She also admitted that she kicked Husband in the head and knocked his glasses off.

(6) Joseph Ketterman testified that he has been a friend of Husband and Wife since high school. He, along with several other people, was present at their house on September 15, 2002 for a party. After the party, Husband wanted to go to a bar with Ketterman and Husband and Wife started to argue about which car Husband should take. Ketterman testified that both parties were arguing loudly. He testified that Wife said something negative about Husband’s father and he thought to himself that she shouldn’t have done that. He saw Husband point his finger at Wife from a distance of about 3 feet, but did not see Husband strike Wife. He confirmed that Husband turned over a table. He did not recall Wife sustaining any injuries, but said she might have felt threatened because Husband is larger than she is.

(7) Husband testified that, on December 7, 2002, he was riding around in his car, distressed because of a message he found on Wife’s cell phone, a number of disturbing late night phone calls involving Wife and an e-mail message indicating that Wife was having an affair with another woman. He went to the door of his house, which was locked, and knocked, but no one answered. After

jiggling the lock, he managed to get into the house. He and Wife then argued about why he had been locked out of the house. Husband testified that he spit on Wife and Wife hit him in the jaw. Husband denied putting his hands around Wife's neck and stated that he held Wife's wrists to prevent her from hitting him. He testified that, after going into the kitchen for a drink of water, he saw some beers in the refrigerator and started dumping them out, which angered Wife. The next day he saw scratches across the bridge of his nose and on his forehead.

(8) Gary Johnson, the next witness, testified that he has known both Husband and Wife for at least 15 years. He stated that Husband confided in him that he was upset by the late hours Wife was keeping and her excessive drinking, and was afraid Wife was having an affair with another woman.

(9) The last witness to testify was Bridget Mitchell, Wife's mother. She testified that she was aware of marital difficulties between Husband and Wife that had worsened recently. Mitchell stated that Wife had lied to her recently about her whereabouts and had been drinking.

(10) Following the hearing, the commissioner denied Wife's PFA petition, stating orally on the record that Wife did not prove by a preponderance of the evidence that either the September incident or the December incident constituted an act of "domestic violence."² In her written order, the commissioner stated that

²DEL. CODE ANN. tit. 10, § 1041(2).

Wife did not prove by a preponderance of the evidence that Husband committed an act of “abuse.”³

(11) This Court’s review of an order of the Family Court entered after a hearing is limited. This Court must accept the factual findings of the Family Court if they are sufficiently supported by the record and are the product of an orderly and logical deductive process, even though we might have reached opposite conclusions.⁴ Only when the factual findings are clearly wrong and justice requires that they be overturned is this Court free to make contradictory findings.⁵ Moreover, when the determination of facts turns on a question of credibility and the acceptance or rejection of the testimony of the witnesses appearing before the trier of fact, this Court will not substitute its own opinion for that of the trier of fact.⁶

(12) The commissioner’s findings in this case turned on a question of credibility and the acceptance or rejection of the testimony of the witnesses appearing before her. Moreover, we do not find the commissioner’s findings to be clearly wrong. We, therefore, cannot conclude that the commissioner abused her

³DEL. CODE ANN. tit. 10, § 1041(1).

⁴*Levitt v. Bouvier*, 287 A.2d 671, 673 (Del. 1972).

⁵*Solis v. Tea*, 468 A.2d 1276, 1279 (Del. 1983).

⁶*Wife (J.F.V.) v. Husband (O.W.V., Jr.)*, 402 A.2d 1202, 1204 (Del. 1979).

discretion by denying Mother's PFA petition. Nor do we find any abuse of discretion on the part of the Family Court judge in affirming the commissioner's order.

NOW, THEREFORE, IT IS ORDERED that the judgment of the Family Court is AFFIRMED.

BY THE COURT:

/s/ Myron T. Steele
Justice