

**NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37**

KAREN K. SLAVICK,

Appellee

v.

RYAN G. SLAVICK,

Appellant

IN THE SUPERIOR COURT OF  
PENNSYLVANIA

No. 1994 WDA 2011

Appeal from the Order Dated December 13, 2011  
In the Court of Common Pleas of Washington County  
Civil Division at No(s): 2005-6617

BEFORE: BENDER, J., GANTMAN, J., and OLSON, J.

MEMORANDUM BY BENDER, J.

**FILED MAY 13, 2013**

Ryan G. Slavick (Mr. Slavick) appeals from the order dated December 13, 2011, that granted Karen K. Slavick's (Ms. Slavick) petition seeking an extension of a protection from abuse (PFA) order.<sup>1</sup> We affirm.

The parties are husband and wife, who are in the process of obtaining a divorce. In its opinion, the trial court set forth the extensive procedural history of this case in regard to numerous PFA orders and extensions that had been entered by the court, the first of which was issued in October of 2005. The most recent petition was filed on October 18, 2011, by Ms. Slavick, who was seeking an extension of the previous PFA order due to

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<sup>1</sup> Ms. Slavick has not filed a brief with this Court in response to Mr. Slavick's appeal. This matter is presented to this panel without oral argument.

events that occurred on October 15, 2011, during the exchange of custody of the parties' son, A.S., which took place at the Monongahela Police Station.

A hearing was held on November 8, 2011, and continued on December 13, 2011, during the course of which both parties testified as to what occurred at the custody exchange. Ms. Slavick's boyfriend, Frank Hnatik, who was present on the afternoon of October 15th, also testified as to the events. Mr. Slavick's brief contains the following rendition of the three witnesses' testimony:

According to Ms. Slavick, during the exchange while she was explaining to Mr. Slavick the details regarding [A.S.'s] medications and meals, Mr. Slavick abruptly stated that he "would appreciate you ... not letting him ... call you ... dad because he's not your son."<sup>[2]</sup> After Ms. Slavick responded by stating "What do you want me to do about it?" and "I can't make him feel or say anything," Mr. Slavick continued to voice his objections and displeasure by pointing his finger at Ms. Slavick and stating that she should make [A.S.] not refer to Mr. Hnatik as dad "or else." (T.T. 11/08/11, p. 7; R. 24a). As Mr. Hnatik was holding [A.S.] in order to hand him over to Mr. Slavick, Mr. Slavick placed his hands around Mr. Hnatik's hands and "squeezed." (T.T. 11/08/11, p. 7; R. 24a). After [A.S.] was transferred to Mr. Slavick, Mr. Slavick placed [A.S.] in his car and departed. Fifteen minutes later, Ms. Slavick returned to the Monongahela Police Department in order to attempt to obtain a surveillance tape of the exchange. After the tape proved to be inconclusive in regards to showing the aforementioned exchange, Ms. Slavick filed a civil complaint with the officer. (T.T. 11/08/11, p. 8-9; R. 25a-26a).

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<sup>2</sup> This statement references Mr. Slavick's comment to Ms. Slavick that he wanted her to stop A.S. from calling Mr. Hnatik dad because Mr. Hnatik was not A.S.'s father.

According to Mr. Hnatik, as he was helping Ms. Slavick prepare [A.S.] and his belongings for transfer to Mr. Slavick, Mr. Slavick walked over to meet them and subsequently pointed his finger at Ms. Slavick and stated that "you will not have [A.S.] call [Mr. Hnatik] dad." Afterwards, as Mr. Hnatik was holding [A.S.] in order to hand him over to Mr. Slavick, Mr. Slavick grabbed [A.S.] in a forcible manner and placed him in the car. In response to the trial court's question "was [the statement] threatening, was it mean, was it something that would make a reasonable person be in fear?"[] Mr. Hnatik responded, "he was loud and boisterous[.]" (T.T. 12/13/11, p. 6-8; R. 48a-50a).

Mr. Slavick testified that that [sic] he has not contacted his wife in any fashion (i.e., telephone, text message, regular mail) in over three or four years. (T.T. 12/13/11, p.13; R. 55a). At the custody exchange on October 15, 2011, Mr. Slavick stated to Ms. Slavick that he "would appreciate it if you wouldn't have [A.S.] call Frank [Mr. Hnatik] dad." Ms. Slavick responded that she could not stop [A.S.] from doing so. Mr. Slavick did not point his finger and he did not speak in a threatening manner; rather, he buckled [A.S.] into his seat and departed the parking lot. (T.T. 12/13/11, p. 16-17; R.58a-59a).

Mr. Slavick's brief at 8-10. The court's opinion provides findings that are similarly stated to those related by Mr. Slavick in his brief. However, the court found that Mr. Slavick "knowingly and admittedly harassed [Ms. Slavick] in a loud and threatening manner regarding matters not related to the custody exchange" and that he "waved his finger in Ms. Slavick's face while yelling at her." Trial Court Opinion (T.C.O.), 11/8/12, at 4-5.<sup>3</sup>

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<sup>3</sup> The trial court also referenced a custody hearing that had been held on June 30, 2011, at which Mr. Slavick "was offered to participate in reunification counseling with the child in order to lift the supervision requirement of his custody with his son and to extend the time he gets to visit with his son." T.C.O. at 6. The court noted that at the time of the PFA hearing in December of 2011, Mr. Slavick "still had not made any plans to (Footnote Continued Next Page)

After the hearing, the court found Mr. Slavick to be in violation of the April 19, 2011 PFA. The court ordered the extension of the existing PFA for an additional 18 months, until June 13, 2013. The court in its opinion explained that Mr. Slavick “continued to show a pattern of behavior that constituted a risk of harm to [Ms. Slavick] which is justification for extending a Protection From Abuse Order under 23 Pa.C.S. § 6108(e).<sup>[4]</sup> The [c]ourt also found that [Mr. Slavick] violated the terms of the previous extension of his PFA, which had been extended [w]ith [Mr. Slavick’s] consent.” T.C.O. at 3. Specifically, the court concluded that Mr. Slavick “exemplified a pattern of behavior that continued to put [Ms. Slavick] at risk from abuse, especially when viewed in the light of past patterns of behavior which have included threatening to kill his family. The incidents described during the latest extension of the [PFA] order not only violate the current PFA order, they further illustrate [Mr. Slavick’s] lack of self[-]control around [Ms. Slavick] and continuation [sic] to put [Ms. Slavick] at risk of harm.” **Id.** at 7.

Mr. Slavick appealed to this Court from the December 13, 2011 order and raises the following issue for our review:

Whether the trial court abused its discretion in granting the petition for extension of the final protection from abuse order

*(Footnote Continued)* \_\_\_\_\_

seek a reunification counselor, nor is there any evidence in the record that [Mr. Slavick] attempted to find a provider for reunification therapy.” **Id.**

<sup>4</sup> Section 6108(e)(1)(i) provides for the extension of a protection order where “the defendant engaged in a pattern or practice that indicates continued risk of harm to the plaintiff....” 23 Pa.C.S. § 6108(e)(1)(i).

when the evidence was insufficient to prove abuse by a preponderance of the evidence?

Mr. Slavick's brief at 6.

"When a claim is presented on appeal that the evidence was not sufficient to support an order of protection from abuse, we review the evidence in the light most favorable to the petitioner and granting her the benefit of all reasonable inference[s], determine whether the evidence was sufficient to sustain the trial court's conclusion by a preponderance of the evidence." ... This court defers to the credibility determinations of the trial court as to witnesses who appeared before it.

**Fonner v. Fonner**, 731 A.2d 160, 161 (Pa. Super. 1999) (quoting **Miller on Behalf of Walker v. Walker**, 445 Pa. Super. 537, 665 A.2d 1252, 1255 (Pa. Super. 1995)). We also note that the preponderance of evidence standard is defined as the greater weight of the evidence, *i.e.*, to tip a scale slightly is the criteria or requirement for preponderance of the evidence. **Commonwealth v. Brown**, 567 Pa. 272, 786 A.2d 961, 968 (Pa. 2001), *cert. denied*, 537 U.S. 1187, 154 L. Ed. 2d 1018 (2003).

**Raker v. Raker**, 847 A.2d 720, 724 (Pa. Super. 2004). **See also Mescanti v. Mescanti**, 956 A.2d 107 (Pa. Super. 2008).

Additionally, we set forth the definition of "abuse" found in the PFA Act:

**"Abuse."** The occurrence of one or more of the following acts between family or household members, sexual or intimate partners or persons who share biological parenthood.

- (1) Attempting to cause or intentionally, knowingly or recklessly causing bodily injury, serious bodily injury, rape, involuntary deviate sexual intercourse, sexual assault, statutory sexual assault, aggravated indecent assault, indecent assault or incest with or without a deadly weapon.

(2) Placing another in reasonable fear of imminent serious bodily injury.

(3) The infliction of false imprisonment pursuant to 18 Pa.C.S. § 2903 (relating to false imprisonment).

(4) Physically or sexually abusing minor children, including such terms as defined in Chapter 63 (relating to child protective services).

(5) Knowingly engaging in a course of conduct or repeatedly committing acts toward another person, including following the person, without proper authority, under circumstances which place the person in reasonable fear of bodily injury. The definition of this paragraph applies only to proceedings commenced under this title and is inapplicable to any criminal prosecution commenced under Title 18 (relating to crimes and offenses).

23 Pa.C.S. § 6102(a).

The thrust of Mr. Slavick's argument is that the limited evidence was insufficient to support a finding that Ms. Slavick was, in fact, put in fear of imminent serious bodily injury and that that "fear was not reasonable under the facts of this case." Mr. Slavick's brief at 13. Mr. Slavick recognizes that Ms. Slavick testified that "Mr. Slavick put his finger in her face and requested that she not have their son, [A.S.], refer to her boyfriend, Mr. Hnatik, as dad **'or else.'**" *Id.* (emphasis added). However, he argues that Mr. Hnatik responded to the court's question about whether Mr. Slavick's statement was threatening or "would make a reasonable person be in fear" by only indicating that Mr. Slavick was "loud and boisterous." *See* N.T., 12/13/11, at 7-8. Mr. Slavick also contends that the "or else" comment, "without an accompanying action, is insufficient to establish a 'reasonable' fear on the

part of Ms. Slavick.” Mr. Slavick’s brief at 14. Thus, he claims that without more, that statement cannot be viewed as a threat or support the extension of the PFA.

We disagree. Not only did Ms. Slavick testify about her fear of Mr. Slavick, she also mentioned the fear experienced by the parties’ daughter, who has no relationship with her father. **See** N.T., 11/8/11, at 12; N.T., 12/13/11, at 24. Additionally, Ms. Slavick testified as to her understanding of Mr. Slavick’s use of the term “or else.” She stated that Mr. Slavick never articulates what he means, but that he makes constant threats about the PFAs and “said that as soon as the PFA is done he’s getting his guns from the police department and he’ll be at the house. He’s threatened to kill us all....” N.T., 11/8/11, at 9-10. The trial court noted that “these threats were made less than a year prior to these [the present] hearings, and although the [c]ourt had already extended the PFA [o]rder since they [the threats] were made, these statements show a history of behavior which, when paired with more recent harassment makes [Ms. Slavick’s] fear of [Mr. Slavick] reasonable.” T.C.O. at 5.

“In the context of a PFA case, the court’s objective is to determine whether the victim is in reasonable fear of imminent serious bodily injury....” **Raker**, 847 A.2d at 725. Here, the court found that to be the case, based upon the testimony about the present incident and Mr. Slavick’s previous actions. The **Raker** court explained that the appellant in that case failed:

to recognize that [the appellee's] testimony regarding her fear of [the appellant] was believed by the trial court and in conjunction with her testimony about [the appellant's] actions previously and on the night of the precipitating events is sufficient to support the court's determination that she was in fear of imminent serious bodily injury. **See *Williamson v. Williamson***, 402 Pa. Super. 276, 586 A.2d 967, 972 (Pa. Super. 1991) (providing that "finder of fact is entitled to weigh evidence and assess credibility" and "believe all, part or none of the evidence presented"). Thus, because the evidence believed by the trial court is sufficient to establish that due to [the appellant's] actions [the appellee] was in reasonable fear of bodily harm, we affirm the trial court's order.

**Id.** at 926. Furthermore, in response to Mr. Slavick's allegation that Ms. Slavick's fear was not reasonable, we are aided by this Court's discussion in ***Buchhalter v. Buchhalter***, 959 A.2d 1260, 1264 (Pa. Super. 2008), wherein we stated that "[t]hat facts surrounding the prior PFA consent order are relevant to an understanding as to the reasonableness of [the victim's] fear relative to the present petition." Thus, taken together, both Mr. Slavick's present actions and his past actions combine to form a basis to support a finding that Ms. Slavick's fear was reasonable.

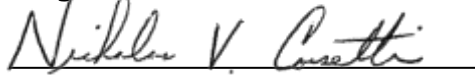
Accordingly, we conclude that the court did not abuse its discretion in granting the extension of PFA petition. The court's conclusions were based on sufficient evidence to prove that Mr. Slavick put Ms. Slavick in reasonable fear of imminent serious bodily injury and that the fear was reasonable



under the circumstances. We therefore affirm the December 13, 2011 order.<sup>5</sup>

Order affirmed.

Judgment Entered.

A handwritten signature in cursive script, reading "Nicholas V. Casatta", is written over a horizontal line.

Deputy Prothonotary

Date: 5/13/2013

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<sup>5</sup> In his brief, Mr. Slavick mentions his "concern" that "the trial court overstepped its bounds and became an advocate for Ms. Slavick instead of an impartial fact-finder." Mr. Slavic's brief at 15. Mr. Slavick also mentions the court's questions concerning the pending custody matter and the reunification counseling, which he claims were not relevant to the PFA petition before the court. **Id.** In asserting these "concerns," Mr. Slavick has overlooked Pa.R.A.P. 302 ("Issues not raised in the lower court are waived and cannot be raised for the first time on appeal.") and Pa.R.A.P. 1925(b)(4)(vii) ("Issues not included in the Statement [of errors complained of on appeal] and/or not raised in accordance with the provisions of this paragraph (b)(4) are waived."). Therefore, we will not address these claims.