

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

KELLY BAY, Plaintiff	vs.	: No. FC-21-21003 : : : :
NEIL BAY, Defendant		: <i>Pa. R.A.P. 1925(a)</i> : <i>Opinion in Support of Order</i>

**Pa. R.A.P. 1925(a) OPINION IN SUPPORT OF THE JANUARY 21, 2022 FINAL**

**PROTECTION FROM ABUSE ORDER**

AND NOW, this 6<sup>th</sup> day of April 2022, pursuant to Pennsylvania Rule of Appellate Procedure 1925(a), the Court hereby issues the following Opinion in support of the Final Protection from Abuse Order (“PFA”) entered by the Honorable Joy Reynolds McCoy on January 21, 2022.<sup>1</sup>

***BACKGROUND***

On November 11, 2021, Plaintiff Kelly Bay filed a Petition for Protection from Abuse against Defendant Neil Bay, her father. In the Petition, Plaintiff indicated she resided at 941 Torbert Lane in Jersey Shore, PA (“941 Torbert Lane”), and that on November 8, 2021 Defendant “showed up to [941 Torbert Lane] unannounced... was behaving erratically... made up a few stories to why he was at the property... was making up delusional stories and was behaving oddly... [and] was being mentally and emotionally abusive to the plaintiff.” The Petition further indicated “[t]here is a history of defendant physically abusing the plaintiff when she was a minor. The defendant suffers from mental health issues and his behaviors are unpredictable.

---

<sup>1</sup> Judge McCoy retired from the bench on January 28, 2022. This appeal, commenced by Defendant on February 18, 2022, was assigned to this Court. The Court has reviewed the entirety of the file, including the transcript of the final hearing, all Orders of Court, and all filings of the parties.

The defendant has strangled the plaintiff in the past.” The Petition sought the entry of a Temporary PFA followed by a hearing and entry of a Final PFA to, *inter alia*, “[r]estrain[] Defendant from abusing, harassing, stalking, threatening, or attempting or threatening to use physical force against Plaintiff,” “[e]vict/exclude Defendant from [941 Torbert Lane],” and “[p]rohibit Defendant from having any contact with Plaintiff.”

On November 12, 2021, following an *ex parte* hearing pursuant to Pa. C.S. § 6107(b), this Court granted Plaintiff’s Petition and entered a Temporary PFA, which was served on Defendant later that day. A final hearing was scheduled for November 24, 2021 before the Honorable Ryan M. Tira.<sup>2</sup> On November 17, 2021, Defendant filed a *pro se* Continuance Request, asking for “a continuance to (no sooner than) late January 2022. Continuance is requested to provide sufficient time to interview/select Attorney, collect evidence, and prepare for trial.” That day, Judge Tira granted Defendant’s Continuance Request and rescheduled the final hearing to January 21, 2022 at 9:30 a.m. before the Honorable Joy Reynolds McCoy. Judge Tira’s Order continuing the hearing noted that the Temporary PFA would remain in effect until the final hearing was held.

### **HEARING AND FINAL PFA**

On January 21, 2022, the final hearing was held before Judge McCoy. Plaintiff was represented by Angela Lovecchio, Esq. and Defendant was represented by Lindsay Scheller, Esq. Three witnesses testified: Plaintiff, Defendant, and Eric Tuller.

---

<sup>2</sup> 23 Pa. C.S. § 6107(a) requires a final hearing to be scheduled within ten business days following the filing of a petition for a PFA. November 24, 2021 was the ninth business day after the Petition was filed.

Plaintiff testified first, briefly explaining her personal and family history.<sup>3</sup> Plaintiff testified that prior to November 8, 2021, she had not seen Defendant, her father, in approximately ten years, choosing not to see him because he was dysfunctional and she was afraid of him.<sup>4</sup> She testified that he was “psychologically abusive,” describing him as “[g]as-lighting” and a “con artist....” Plaintiff stated when she lived at Defendant’s home while she was in high school, Defendant “ended up strangling” her, causing scrape marks to her neck, after which Defendant kicked her out of the house.<sup>5</sup> She testified that she did not really have a relationship with Defendant, though she had “tried to have a relationship with him” and he had “reached out throughout the years.”<sup>6</sup>

Plaintiff testified that she and Defendant owned 941 Torbert Lane jointly, and that she “basically left [her] apartment in New York” to come to the property to attempt to rectify years of severe disrepair.<sup>7</sup> She explained that she had texted Defendant to inform him of the poor condition of the cabin, and at some point her brother informed her that Defendant was coming to 941 Torbert Lane in the middle of the night.<sup>8</sup> Plaintiff explained that she called the police, who told her they couldn’t act until Defendant arrived, and “pushed all the furniture up against the walls because [she] didn’t know what he would do.”<sup>9</sup> Plaintiff contacted multiple friends, including

---

<sup>3</sup> January 21, 2022 *N.T.* 4:4 – 5:2.

<sup>4</sup> *Id.* at 6:1 – 7:13.

<sup>5</sup> *Id.* at 6:16 – 7:2.

<sup>6</sup> *Id.* at 7:5 – 7:13.

<sup>7</sup> *Id.* at 5:7 – 5:13. Plaintiff later testified that she moved into 941 Torbert Lane on October 23 or 24 of 2021, a little over two weeks before the November 8, 2021 incident. *Id.* at 19:11 – 19:14.

<sup>8</sup> *Id.* at 5:14 – 5:17. Plaintiff did not explicitly testify that this occurred on November 7, 2021, but she testified that Defendant arrived the next day, November 8, 2021.

<sup>9</sup> *Id.* at 5:18 – 5:23.

Eric Tuller (“Tuller”); when Defendant did not appear in the middle of the night, Tuller came to 941 Torbert Street the next morning and was there when Defendant arrived.<sup>10</sup> Plaintiff also purchased cameras, explaining that she believed Defendant “would behave better if Eric was there and it would be a better situation, and I also got the cameras just in case.”<sup>11</sup>

Plaintiff testified that at some point on November 8, 2021, she “heard a lot of yelling,” at which time Tuller informed her that Defendant had arrived.<sup>12</sup> She stated that Defendant immediately “came an inch away from [her] face” and began demanding to know what she was doing at 941 Torbert Lane, yelling that she needed to leave, and then pushed past her and walked into the living room.<sup>13</sup> Plaintiff testified that after yelling numerous questions and accusations, Defendant left the house, at which point she called the police; Defendant soon returned and resumed his yelling.<sup>14</sup> Plaintiff testified that she is 5’1” in height and Defendant is 6’0”, and she was “really worried and scared” because she knows him to be unpredictable.<sup>15</sup>

On cross-examination, Plaintiff agreed that she and Defendant had exchanged some texts over the previous years.<sup>16</sup> She agreed that on November 8, 2021, the day of the incident at issue in this case, Defendant texted her, imploring her to check her dog for ticks and fleas, and that she texted him in 2020 about the mold remediation she was doing at 941 Torbert Lane.<sup>17</sup> Plaintiff agreed that in the 2020

---

<sup>10</sup> *Id.* at 7:20 – 7:23.

<sup>11</sup> *Id.* at 8:15 – 8:17.

<sup>12</sup> *Id.* at 8:20 – 8:23.

<sup>13</sup> *Id.* at 8:24 – 9:22.

<sup>14</sup> *Id.*

<sup>15</sup> *Id.* at 9:25 – 10:9.

<sup>16</sup> *Id.* at 10:21 – 13:3.

<sup>17</sup> *Id.* at 10:21 – 11:23.

message she told Defendant that she didn't want him to come to 941 Torbert Lane, and that the dispute over that property began when "he started filling it with garbage, leaving raw meat out and creating [a] mouse infestation and... neglecting the property..." and had thus been continuing "for... a long time."<sup>18</sup> With regard to the message about fleas and ticks, Plaintiff explained that this is part of Defendant's practice of "psychological... games," stating that "when he acts very aggressively towards me or causes me psychological harm, he acts like everything is fine and it didn't happen."<sup>19</sup>

Plaintiff explained that she and Tuller set up one of the cameras she had purchased outside and another in the living room of 941 Torbert Lane, but that they "had not yet set up the cameras to do more than motion detection, so, unfortunately it just shows people in motion for less than 10 seconds...."<sup>20</sup> Plaintiff described how the police arrived approximately 20 or 30 minutes after she called them, by which point Defendant had left 941 Torbert Lane and walked over to communicate with a neighbor.<sup>21</sup> Plaintiff agreed that she did not suffer injury on November 8, 2021, which she attributed to Tuller's presence, and that she called the police that day because she was afraid Defendant was going to injure her.<sup>22</sup> She reiterated that Defendant has been physically violent with her before, though not since she was 16 years of age, approximately 21 years ago.<sup>23</sup> Plaintiff agreed that, in that time, she had

---

<sup>18</sup> *Id.* at 12:24 – 13:3.

<sup>19</sup> *Id.* at 13:25 – 14:7.

<sup>20</sup> *Id.* at 14:11 – 14:23.

<sup>21</sup> *Id.* at 15:2 – 16:2.

<sup>22</sup> *Id.* at 16:5 – 16:24.

<sup>23</sup> *Id.* at 16:7 – 16:19.

communicated little with Defendant, and in the few text conversations they had about 941 Torbert Lane he had not threatened her or been verbally abusive.<sup>24</sup>

On redirect, Plaintiff clarified that Defendant physically pushed past her on November 8, 2021.<sup>25</sup> She stated that Defendant “changed his story about three times” as to why he came to 941 Torbert Lane that day, and that the police suggested she call adult protective services in the Philadelphia area where Defendant lives and directed her on how to obtain a PFA if she felt threatened.<sup>26</sup>

In response to questioning by the Court, Plaintiff explained that there was a time in her 20s when she “was trying to have a relationship with” Defendant, and “[h]e would show up at [her] work and leave gifts and things like that.”<sup>27</sup> She clarified that, prior to November 8, 2021, she had not seen Defendant since she was 26 or 27 years old, approximately nine or ten years earlier.<sup>28</sup> Plaintiff stated that during that time, Defendant had “only really come[] up [to 941 Torbert Lane] to drop off stuff,” and that the neighbors would inform her of his visits, including one in the two weeks prior to the November 8, 2021 incident.<sup>29</sup>

On re-direct following the Court’s questions, Plaintiff testified that although she was aware Defendant had filed a partition action concerning 941 Torbert Lane (the

---

<sup>24</sup> *Id.* at 17:3 – 17:16.

<sup>25</sup> *Id.* at 18:10 – 18:12.

<sup>26</sup> *Id.* at 18:15 – 18:23.

<sup>27</sup> *Id.* at 19:18 – 20:2.

<sup>28</sup> *Id.* at 20:11 – 20:21.

<sup>29</sup> *Id.* at 21:1 – 21:11.

“Partition Action”),<sup>30</sup> she was not lying or otherwise pursuing a PFA for any reasons to do with her and Defendant’s shared ownership of that property.<sup>31</sup>

The next witness was Eric Tuller, called by Plaintiff. Tuller testified that on the morning of November 8, 2021, Plaintiff texted him, clearly afraid of Defendant’s approaching arrival, and in response Tuller went to 941 Torbert Lane to make sure she was all right.<sup>32</sup> He and Plaintiff picked up security cameras and began installing them until Defendant arrived at approximately 2:00 p.m.<sup>33</sup> He explained that Defendant approached him asking him questions about who he was and what he was doing at the property.<sup>34</sup> After Tuller went inside to inform Plaintiff of Defendant’s arrival, she and Defendant met at the door, where Defendant “was in her face and very aggressive with her,” telling her she needed to leave and ultimately pushing past her into the living room while continuing to hurl accusations.<sup>35</sup> Tuller testified that Plaintiff was “pretty shaken by” this display, and that Defendant then went outside and began screaming profanities and further accusations.<sup>36</sup> Tuller stated that Defendant then noticed a security camera, and that “as soon as he realized [he] was being recorded his demeanor completely changed. He sat down. He started... changing his tone.”<sup>37</sup> Tuller explained that Plaintiff, still scared, called the police,

---

<sup>30</sup> Defendant filed a partition action, docketed to CV-22-0053, on January 19, 2021, two days prior to the final hearing in this matter. The Partition Action is discussed *infra*.

<sup>31</sup> *Id.* at 21:21 – 23:2.

<sup>32</sup> *Id.* at 24:4 – 24:22.

<sup>33</sup> *Id.* at 24:22 – 24:25.

<sup>34</sup> *Id.* at 25:2 – 25:5.

<sup>35</sup> *Id.* at 25:5 – 25:14.

<sup>36</sup> *Id.* at 25:20 – 26:1.

<sup>37</sup> *Id.* at 26:1 – 26:7.

because she was “insisting that someone come out to kind of oversee the situation.”<sup>38</sup>

On cross-examination, Tuller clarified that Defendant was still at 941 Torbert Lane when the responding police officers left, and that he was not aware of the police ever asking Defendant to leave.<sup>39</sup> At this point, Plaintiff rested.

Defendant testified next, explaining that on the morning of November 8, 2021 he drove up from his home in the Philadelphia area for the purpose of moving furniture to 941 Torbert Lane because friends of his were planning to join him there for three days to clean out the garage and work on the property.<sup>40</sup> Defendant testified that he’d been moving things into 941 Torbert Lane periodically from 2017 through November of 2021.<sup>41</sup>

Defendant testified that when he arrived at 941 Torbert Lane, there were two cars there he had never seen before, and when he saw Tuller he asked him who he was and why he was on the property.<sup>42</sup> Tuller responded he was “a friend,” but when Defendant asked him whose friend he was Tuller simply entered the house.<sup>43</sup> Defendant testified he entered the house and “walked around the house and all of [Plaintiff’s] furniture was there,” having replaced furniture he had left there and causing him to ask Plaintiff why she had moved the contents of her apartment in New York to 941 Torbert Lane and whether everything was all right.<sup>44</sup> Defendant testified

---

<sup>38</sup> *Id.* at 26:12 – 26:21.

<sup>39</sup> *Id.* at 17:6 – 27:15.

<sup>40</sup> *Id.* at 28: 22 – 29:10.

<sup>41</sup> *Id.* at 29:15 – 29:16.

<sup>42</sup> *Id.* at 29:19 – 29:25.

<sup>43</sup> *Id.* at 29:25 – 30:2.

<sup>44</sup> *Id.* at 30:2 – 30:19.



that while talking to him Plaintiff “was tense. And it was like she was reading from a prepared speech. In fact, I told her at the time, you sound like you’re talking from a speech. What’s going on?”<sup>45</sup> At this time, Defendant testified, he noticed the camera and “realized after what I had told her was a prepared speech that the whole thing was set up... [s]o I told her her speech was all contrived and it was like watching a play unfold, and so I walked out” and began talking to a neighbor until the police arrived.<sup>46</sup> Defendant stated he approached the police, who looked confused, and asked them if they were lost, but when they asked where the Bay house was and explained that Plaintiff had called them, he directed them to 941 Torbert Lane.<sup>47</sup>

Defendant testified that he had previously changed his mailing address (and the address on his driver’s license) to 941 Torbert Lane, and that while the police were inside the house, he made the three-to-four minute walk to the property’s mailbox.<sup>48</sup> When he arrived at the mailbox, however, he noticed that his key didn’t work in the mailbox and that its lock had been drilled out.<sup>49</sup> Defendant testified that he assumed Plaintiff was showing the police the video, and that “the reason [he] asked for the video [to show at the final PFA hearing] is... because [he] thought it was great. There was nothing that happened.”<sup>50</sup>

Defendant testified that he had arrived at the house that day with a trailer that had two tables and a grandfather clock, and that he unloaded those items into his

---

<sup>45</sup> *Id.* at 31:6 – 31:11.

<sup>46</sup> *Id.* at 31:16 – 32:8.

<sup>47</sup> *Id.* at 32:9 – 32:16. Defendant later testified that both he and Plaintiff personally knew the two state troopers who arrived that afternoon.

<sup>48</sup> *Id.* at 32:17 – 33:2.

<sup>49</sup> *Id.*

<sup>50</sup> *Id.* at 33:3 – 33:12.

bedroom at 941 Torbert Lane.<sup>51</sup> He stated that he asked Plaintiff how long she was going to stay, because he wanted to plant some things and do some work in the spring, and that she explained her staying there would be temporary, to which he assented.<sup>52</sup> At this point, Defendant left.<sup>53</sup>

Defendant recounted occasions when he had contact with Plaintiff in the past, including a cruise in 2007 or 2008, and at Christmases and Thanksgivings beginning around 2006 and continuing for at least two years.<sup>54</sup> Defendant testified that he provided financial assistance to Plaintiff over the years, including renting the truck for her to move from Austin to New York, and that he saw Plaintiff a number of times in New York to help her move apartments and on at least some occasions attend events.<sup>55</sup> Defendant testified that following the event in 2001 or 2002 after which contact between Plaintiff and Defendant temporarily ceased, they reconciled, and he provided her an American Express credit card to support her, which she used to purchase a coffee table in 2005.<sup>56</sup>

Regarding that incident, Defendant recounted that they were living in Austin, and that Plaintiff – then 16 – was dating a 20-or-21-year-old man named Jason.<sup>57</sup> Defendant testified that Plaintiff and Jason would repeatedly go to her bedroom with the door shut, and Defendant informed them that if they continued doing this Jason would no longer be permitted in the home.<sup>58</sup> Defendant stated that after he told them

---

<sup>51</sup> *Id.* at 34:22 – 35:7.

<sup>52</sup> *Id.* at 35:10 – 35:19.

<sup>53</sup> *Id.* at 35:20.

<sup>54</sup> *Id.* at 36:6 – 37:4.

<sup>55</sup> *Id.* at 37:9 – 37:19.

<sup>56</sup> *Id.* at 37:25 – 38:19.

<sup>57</sup> *Id.* at 40:23 – 40:25.

<sup>58</sup> *Id.* at 41:14 – 42:2.

this, the next time he arrived home “they were all packed” to leave, with Plaintiff telling him “if you’re throwing Jason out, you’re throwing me out because we’re a couple....”<sup>59</sup> Defendant testified he “grabbed [Plaintiff] by the arm. I did put my hands on her, but it was like grabbing her by the two shoulders,” telling her that she couldn’t leave; he explained that Plaintiff “wanted to push through me. I grabbed her arms, and the whole thing took maybe 10 or 15 seconds if you timed it because it got to the point where it escalated and it was obvious that I wasn’t going to be able to stop them. So they left.”<sup>60</sup> Defendant testified that he has never choked, hit, or threatened to harm Plaintiff.<sup>61</sup>

Defendant next testified that he filed a Partition Action on January 19, 2021, two days prior to the hearing.<sup>62</sup> Defendant indicated that his house in Philadelphia was up for sale, and that he had intended to move into 941 Torbert Lane, but that he would not do so until after the Partition Action was decided or while Plaintiff was staying at 941 Torbert Lane.<sup>63</sup>

On cross-examination, Defendant explained that his systematic moving of items from his house near Philadelphia to 941 Torbert Lane was interrupted by COVID, and that he caught COVID in early 2020.<sup>64</sup> He testified that he especially wanted to move his more valuable family heirlooms and antiques to safety at 941 Torbert Lane while his residence in Philadelphia was being renovated.<sup>65</sup> Defendant

---

<sup>59</sup> *Id.* at 42:3 – 42:25.

<sup>60</sup> *Id.* at 42:25 – 43:15.

<sup>61</sup> *Id.* at 43:16 – 44:2.

<sup>62</sup> *Id.* at 44:6. Plaintiff indicated that although she was aware of the Partition Action she had not yet been served a copy of the Complaint in Partition as of the January 21, 2022 hearing.

<sup>63</sup> *Id.* at 44:17 – 44:25.

<sup>64</sup> *Id.* at 46:16 – 46:18.

<sup>65</sup> *Id.* at 48:14 – 48:20.

clarified that although many of the occasions during which he spent time with Plaintiff were around 2006 and 2007, he has helped her move since then.<sup>66</sup> Defendant agreed that he had told his son, Plaintiff's brother, that he was going to 941 Torbert Lane approximately a week prior to November 8, 2021, and clarified that he didn't know Tuller, Plaintiff's friend who was at the property when Defendant arrived.<sup>67</sup>

Following the close of Defendant's evidence, Plaintiff testified briefly on rebuttal. She explained that Defendant's account of seeing her multiple times around 2006 to 2008 was true, and that this is what she was describing when she said "there were several times in [her] early 20s that [she] tried to have a relationship with [Defendant]."<sup>68</sup> Regarding the incident in 2001 involving Jason, Plaintiff testified that Jason was 18 at the time, and that one night Defendant "got up in the middle of the night... and he started yelling and screaming accusing us of having sex," even though "Jason was in the living room [and] I was in my bedroom. He threw Jason out into a hurricane in his boxers without his glasses and he had to sleep in his car."<sup>69</sup> Plaintiff testified that Defendant strangled her during a different incident at the house shortly thereafter, but that Jason wasn't present or involved and her brother stopped Defendant from harming her, at which time Defendant told her to "get the f\*\*\* out of his house."<sup>70</sup> Plaintiff testified that she "was terrified" on November 8, 2021, was "terrified now" at the hearing, because she "honestly [does] not know what [Defendant] is capable of"; she testified that Defendant had approached her offering

---

<sup>66</sup> *Id.* at 49:1 – 50:6.

<sup>67</sup> *Id.* at 50:11 – 51:13.

<sup>68</sup> *Id.* at 52:19 – 53:4.

<sup>69</sup> *Id.* at 53:8 – 53:15.

<sup>70</sup> *Id.* at 53:16 – 54:4.

to “stay away from the house” if she would agree to drop the PFA, but that she refused because “then I’m still a sitting duck and he can do whatever he wants to me whenever he wants.”<sup>71</sup>

During closing argument, Plaintiff’s counsel argued that the evidence clearly showed Plaintiff was extremely afraid of Defendant, and the PFA was designed for – and necessary to ensure – that Plaintiff would not have to live in fear of Defendant. She highlighted the testimony concerning Defendant’s past history of abuse, and explained that Plaintiff just wants to live in peace and is willing to comply with whatever legal determination arises out of the Partition Action. She noted that Tuller’s testimony corroborated Plaintiff’s, and argued that Tuller would have no reason to lie.

Defendant’s counsel characterized Plaintiff’s attempts to get a PFA as a ploy to keep Defendant out of 941 Torbert Lane, and contended that the Petition’s characterization of Defendant’s arrival on November 8, 2021 as “unannounced” was belied by the evidence presented. She noted that Plaintiff did not claim Defendant made any physical contact with her that day, and that the police had not asked Defendant to leave.

After hearing all evidence, testimony, and argument, Judge McCoy granted a Final PFA, stating on the record as follows:

“Okay. Well, clearly what happens in most PFAs, a lot of it is I have to make a determination on who I believe is telling me the truth or what the truth might be somewhere in the middle between what everyone is telling me. I disagree, Attorney Scheller, that someone showing up unannounced versus knowing from a third party that they’re coming are two completely different things. I think it was pretty clear that [Defendant] did not contact [Plaintiff] and say, I’m coming. But for her

---

<sup>71</sup> *Id.* at 55:9 – 55:25.

brother telling her she wouldn't have known, and that's the way I view unannounced so just one example that you gave I don't interpret it the same way.

After – based on what I witnessed here today, based upon the tone, based upon the clear emotion that everyone is bringing it is clear to me that this is a hostile relationship, volatile relationship, a toxic relationship. That's very clear to me, and I do believe that there have been incidents of abuse between the parties, and I find that the Plaintiff does have a basis to have a reasonable fear for her safety so I'm going to grant the PFA.

I'm granting the Plaintiff exclusive possession of 941 Torbert Lane in Jersey Shore. This PFA will be in effect for a period of six months. You guys need to get the partition dealt with.

I'm going to indicate in the PFA that my granting of exclusive possession of 941 Torbert Lane to the Plaintiff during the next six months through the PFA in no way is to be construed as setting any type of precedence in the pending partition action between the Plaintiff and the Defendant who own it together. I am in no way giving anyone an upper hand by granting it here in the partition action.”

In accordance with Judge McCoy's statement at the time of the hearing, the Final PFA was entered that day, including all of the provisions of the Temporary PFA as well as a new provision stating “[t]he granting of exclusive possession of 941 Torbert Lane to Plaintiff through this PFA should in no way be construed as setting any precedence in the pending partition action between Plaintiff and Defendant who own 941 Torbert Lane, Jersey Shore, PA, jointly.”

### ***APPEAL***

On February 18, 2022, Defendant filed an appeal from the January 21, 2022 Final PFA. On March 2, 2022, this Court issued an Order pursuant to Pennsylvania Rule of Appellate Procedure 1925(b), directing Defendant to file a concise statement of the matters complained of on appeal within twenty-one (21) days. On March 25,

2022,<sup>72</sup> Defendant filed a concise statement of errors complained of on appeal.

Defendant raises four alleged errors:

- “Whether the Court erred by utilizing a Final [PFA] to evict [Defendant] from 941 Torbert Lane, Jersey Shore, PA, until the conclusion of a Partition action regarding said real property.”
- “Whether the Court erred in finding [Plaintiff] was in reasonable fear of imminent bodily injury from [Defendant] when:
  - o [Plaintiff] moved into 941 Torbert Lane, knowing that it was jointly owned with [Defendant], without telling [Defendant];
  - o [Plaintiff] testified as to nonconfrontational text messages between her and [Defendant] days prior to the incident of alleged abuse;
  - o [Plaintiff] was told about [Defendant’s] arrival far enough in advance to call a friend to help her purchase and set up video cameras;
  - o [Plaintiff’s] encounter with [Defendant] was [premeditated] evidenced by orchestrating the day with friends;
  - o [Plaintiff] testified that [Defendant] left the property after speaking to [Plaintiff] in the living room of the residence and walked to a neighbor’s house;

---

<sup>72</sup> Defendant’s concise statement of matters complained of on appeal was filed 23 days after this Court’s March 2, 2022 Order, and was thus two days late. The concise statement was not dated, but the Certificate of Service was dated March 25, 2022; thus, the Court does not believe postal delay, or other delay in the filing process, is to blame for this lateness. Defendant has not asked the Court for an enlargement of time pursuant to Rule 1925(b)(2)(i) or (ii), and has not otherwise provided any reasoning for or acknowledgment of its late filing.

Even so, the Court is not convinced that a two-day delay in the filing of this statement supports a finding of waiver, especially in the absence of any suggestion by Plaintiff that she is prejudiced by the delay, and thus the Court has prepared this 1925(a) Opinion to ensure that any reviewing court has a full understanding of the record and the Court’s rulings should it deem Defendant’s contentions properly preserved. *Compare Kern v. Kern*, 892 A.2d 1 (Pa. Super. 2005) (in absence of prejudice, appellants’ issues not deemed waived as result of filing concise statement of errors three days after notice of appeal rather than contemporaneously as required by law), *with Com. v. Castillo*, 888 A.2d 775 (Pa. 2005) (defendant’s filing of concise statement of errors thirty-eight days after close of fourteen-day period for doing so resulted in waiver of issues on appeal).

- [Plaintiff] testified that she called the police after [Defendant] had left the property;
  - [Defendant] helped responding officers find the home, and the officers told [Plaintiff] that [Defendant] had a right to be at the property; and
  - [Plaintiff] testified that [Defendant] voluntarily left the property again after the police left.”
- “Whether [Defendant] arrived at the property unannounced at 941 Torbert Lane when [Plaintiff] had at least a day’s notice of his arrival, and had the opportunity to contact [Defendant] prior to his arrival, but instead installed a video camera in the living room with the explicit intent of videotaping their conversation.”
  - “Whether the Court erred in finding there was prior abuse based on [Plaintiff’s] uncorroborated allegation that [Defendant] choked her twenty-one (21) years prior, and when [Plaintiff] had repeated contact with [Defendant] since, including accepting financial assistance from [Defendant].”

## **ANALYSIS**

### **A. Relevant Law**

To obtain a final PFA, a petitioner “must prove the allegation of abuse by a preponderance of the evidence” at the final PFA hearing.<sup>73</sup> Under the Protection From Abuse Act, “abuse” includes, *inter alia*, “[t]he occurrence of one or more of the following acts between family or household members: ... [p]lacing another in reasonable fear of imminent serious bodily injury... [or] [k]nowingly engaging in a course of conduct or repeatedly committing acts toward another person... under circumstances which place the person in reasonable fear of bodily injury....”<sup>74</sup> When a court is “determining whether the victim is in reasonable fear of imminent serious bodily injury... [t]he intent of the alleged abuser is of no moment.”<sup>75</sup>

---

<sup>73</sup> 23 Pa. C.S. § 6107(a).

<sup>74</sup> 23 Pa. C.S. § 6102(a)(2), (5).

<sup>75</sup> *Buchhalter v. Buchhalter*, 959 A.2d 1260, 1263 (Pa. Super. 2008).



## **B. Allegation of Error Regarding Eviction and Partition Action**

Defendant contends the Court “erred by utilizing a Final [PFA] to evict [Defendant] from 941 Torbert Lane, Jersey Shore, PA, until the conclusion of a Partition action regarding said real property.” As phrased, the Court is unsure whether Defendant is contending that the Court improperly implemented a PFA for the purpose of effecting the Partition Action, or if Defendant is contending that – even if the Court was otherwise inclined to enter a Final PFA – it should not have included eviction from 941 Torbert Lane as a provision of the Final PFA due to the Partition Action.

Neither of these contentions has merit. Defendant was served with the Temporary PFA on November 12, 2021, and five days later he requested a two-month continuance to “interview/select [an] Attorney, collect evidence, and prepare for trial.” On January 19, 2022 – two days prior to the final hearing in this matter – Defendant filed the Partition Action. Once the Court became aware of this filing, it took pains to ensure that the PFA would not have any effect on the Partition Action, clearly stating as much on the record and in the Final PFA. It is incontrovertible that the Court intended for the entry of the PFA to be completely independent of the ultimate resolution of the separate civil dispute between the parties concerning their shared ownership of 941 Torbert Lane.

Furthermore, the Court rejects any contention that it should have taken the Partition Action into account and for that reason not evicted Defendant from 941 Torbert Lane. The PFA Act explicitly contemplates that the relief granted “may include... evicting the defendant... if the residence or household is jointly owned... by

the parties....”<sup>76</sup> Indeed, it is quite common for a plaintiff and defendant in a PFA matter to jointly own the property they share as a residence. To allow the pendency of a partition action to affect whether the Court grants such relief would undermine the purpose of the PFA Act to keep the victim safe,<sup>77</sup> inasmuch as it would require a victim to choose between sharing a residence with an abuser or being thrown out on the street due to their abuser’s actions. This is doubly true when a defendant files a partition action *after* the plaintiff files a petition for PFA; to allow an alleged abuser to avoid eviction by filing a partition action on the eve of a final hearing would create a profoundly perverse incentive and invite abuse of process.

In short, the Court struck the correct balance: it did not allow Defendant to wield the Partition Action to gain a benefit in the PFA proceedings, while ensuring commensurately that Plaintiff could not utilize the PFA proceedings to gain a benefit in the Partition Action.

**C. Allegation of Error Regarding Imminent Fear of Bodily Injury**

Defendant contends the Court erred in its finding that Plaintiff was in reasonable fear of bodily injury, and provides eight separate allegations in support of this contention. At the outset, the Court notes that the Final PFA does not explicitly state whether the Court’s finding of abuse was premised on “reasonable fear of imminent bodily injury,” the Defendant’s “[k]nowingly engaging in a course of conduct or repeatedly committing acts... under circumstances which place [Plaintiff] in reasonable fear of bodily injury,” or both. On the record, Judge McCoy stated:

---

<sup>76</sup> 23 Pa. C.S. § 6108.

<sup>77</sup> “The purpose of the PFA Act is to protect victims of domestic violence from those who perpetrate such abuse, with the primary goal of advance prevention of physical and sexual abuse.” *Custer v. Cochran*, 933 A.2d 1050, 1054 (Pa. Super. 2007).

“After – based on what I witnessed here today, based upon the tone, based upon the clear emotion that everyone is bringing it is clear to me that this is a hostile relationship, volatile relationship, a toxic relationship. That’s very clear to me, and I do believe that there have been incidents of abuse between the parties, and I find that the Plaintiff does have a basis to have a reasonable fear for her safety so I’m going to grant the PFA.”

Inasmuch as Judge McCoy highlighted the “hostile... volatile relationship” and “incidents of abuse between the parties,” with at least one prior incident of abuse to have involved strangling,<sup>78</sup> the Court understands Judge McCoy’s decision to reflect a finding of abuse based on both of the above-stated definitions. As discussed below, both are supported by the evidence, and each is independently sufficient to justify the entry of the Final PFA.

Of the eight specific portions of evidence Defendant contends support his allegation of error, many are presented less-than-objectively.<sup>79</sup> The characterization of Plaintiff’s encounter with Defendant as “premeditated [as] evidenced by orchestrating the day with friends” is not supported by the evidence;<sup>80</sup> rather, the testimony showed that Plaintiff’s brother gave her advance warning of Defendant’s impending arrival, and Plaintiff – fearful of what might happen during a one-on-one confrontation without corroboration – called a friend and began setting up cameras to protect her in the event that Defendant’s interactions with her were not peaceful. An acceptance of Plaintiff’s fear in this regard, and a rejection of Defendant’s testimony that the interaction was “orchestrated” as a ploy to obtain ownership of the house, is

---

<sup>78</sup> This incident is addressed in more detail in Section E *infra*.

<sup>79</sup> As such, they are of limited use on appeal, where an appellate court addresses a sufficiency claim by “review[ing] the evidence in the light most favorable to the petitioner... granting her the benefit of all reasonable inferences... [and] defer[ring] to the credibility determinations of the trial court.” *Custer*, 933 A.2d at 1058.

<sup>80</sup> Or, at least, it is not the only characterization that is consistent with the evidence.

a credibility determination inherent in Judge McCoy's finding that Plaintiff reasonably feared for her safety.

Other of Defendant's contentions are likewise framed in a light most favorable to him. It is true that Plaintiff testified Defendant left 941 Torbert Lane to speak with a neighbor, but Tuller (and Defendant) testified that he did so only after noticing a camera. The contention that "the officers told [Plaintiff] that [Defendant] had a right to be at the property" is not supported by the evidence of record; statements made by the troopers involved were objected to by both parties and deemed by the Court to constitute hearsay.

Ultimately, the evidence presented to the Court, taken in a light most favorable to Plaintiff along with all reasonable inferences, established that:

- Defendant had physically abused Plaintiff approximately 21 years earlier;
- Defendant and Plaintiff had intermittently attempted a relationship from the early 2000s until the early 2010s, but Plaintiff had ceased these attempts;
- Defendant knew or believed Plaintiff was at or likely to be at 941 Torbert Lane, and drove from Philadelphia to the property knowing he was likely to encounter her in person for the first time in a decade;
- Plaintiff only learned that Defendant was coming from her brother, and but for this warning would have been surprised by Defendant's arrival;
- Upon learning Defendant would be coming to the property she jointly owned and had moved to a fortnight prior, Plaintiff was immediately

fearful and took multiple steps to protect herself from Defendant, who is much larger than she is;

- When Defendant arrived he was immediately aggressive, shouting accusations at Plaintiff, getting in her face and physically pushing past her; and
- Defendant changed his behavior only after realizing that he might have been recorded.

This evidence is more than sufficient to establish that Plaintiff had a reasonable fear of serious bodily injury when Defendant, who had choked her before, aggressively approached to within inches of her face and began yelling accusations at her immediately upon seeing her for the first time in ten years. Whether Defendant intended to cause this fear is irrelevant; at the very least, the evidence supports the Court's finding that at this point, when Plaintiff's worries that the impending interaction would be less than amicable proved true, her subjective fears of imminent serious bodily harm were reasonable. Additionally, the evidence is sufficient to establish by a preponderance of the evidence that Defendant knowingly engaged in multiple acts over a course of years that reasonably placed Plaintiff in fear of bodily injury when he approached her in person for the first time in a decade at 941 Torbert Lane.

**D. Allegation of Error Regarding Finding that Defendant's Arrival was Unannounced**

Defendant disputes the Court's finding that his arrival was "unannounced," because Plaintiff "had at least a day's notice of [Defendant's] arrival," and could have

contacted Defendant “but instead installed a video camera in the living room with the explicit intent of videotaping their conversation.”

Judge McCoy’s explanation on the record makes clear why she characterized the arrival as “unannounced” – the evidence presented by both parties demonstrated that Defendant did not inform Plaintiff he was going to 941 Torbert Lane, and but for the notice provided by her brother, Plaintiff would have been caught by surprise when Defendant showed up at the property. To quibble about the true definition of “unannounced” is to miss the forest for the trees – that Defendant came to the property on November 8, 2021 without providing Plaintiff notice *himself*, is simply one small piece of the evidence that taken as a whole shows that Plaintiff was a victim of abuse perpetrated by Defendant.

Again, Defendant’s contention, if accepted, would create a perverse incentive that would undermine the purposes of the Protection From Abuse Act. If a person learns that a family member or partner who they have not seen in a decade, and from whom they fear harm, is approaching, it would be inappropriate for a court to hold against that person a failure to contact the feared family member or partner. Such communication would clearly risk exacerbating an already incendiary situation. Rather, that person must be free to take reasonable steps to protect themselves; this is exactly what Plaintiff did here.

**E. Allegation of Error Regarding Finding of Prior Abuse**

Defendant’s final error complained of concerns the Court’s finding of prior abuse. As discussed above, the testimony and evidence was sufficient to support the Court’s determination that the November 8, 2021 incident constituted abuse as

defined by the Protection From Abuse Act under both § 6102(a)(5), which requires a finding of prior abuse, and § 6102(a)(2), which does not. Therefore, as a threshold matter, any error in this regard is harmless.

The Court's finding of prior abuse, however, is adequately supported by the evidence. Defendant highlights that Plaintiff's testimony in this regard was "uncorroborated," but so was his. More pertinently, there is no requirement in the Protection from Abuse Act that a witness's testimony must be corroborated to support the entry of a PFA.<sup>81</sup> The Court's statement on the record that the relationship between the parties "is a hostile relationship, volatile relationship, a toxic relationship. That's very clear to me, and I do believe that there have been incidents of abuse between the parties" clearly reflects a credibility determination crediting Plaintiff's accounts of past abuse. Defendant's contention that Plaintiff accepted financial assistance from him in the intervening years is irrelevant to what happened prior to those years, and the Court clearly considered this testimony and determined it was not sufficient to alter the ultimate credibility determination. Any suggestion that a victim's acceptance of financial assistance is sufficient to invalidate an otherwise appropriate finding of abuse is absurd, inasmuch as victims of abuse are often not in a position to refuse the financial contributions of their abuser.

---

<sup>81</sup> See *Hood-O'Hara v. Wills*, 873 A.2d 757, 761 (Pa. Super. 2005). Although there does not appear to be a published case explicitly stating that the uncorroborated evidence of a victim may be sufficient by itself to satisfy that victim's burden and support the entry of a PFA order, the general principal is well-established in multiple contexts in Pennsylvania law. See *Com. v. Johnson*, 180 A.3d 474, 481 (Pa. Super. 2018) ("the uncorroborated testimony of a single witness is sufficient to sustain a conviction for a criminal offense, so long as that testimony... addresses every element of the charged crime"); *Hanna v. Hanna*, 171 A.2d 646, 648 (Pa. Super. 1961) ("[s]ince the plaintiff is a competent witness a [divorce] decree may be founded upon his testimony alone even if it is uncorroborated and although it may be contradicted by the defendant").

**CONCLUSION**

For the reasons stated above, the Final PFA in this matter, entered on January 21, 2021 by the Honorable Joy Reynolds McCoy, was appropriately granted pursuant to the Protection from Abuse Act, and therefore this Court's ruling should be affirmed.

IT IS SO ORDERED this 6<sup>th</sup> day of April 2022.

By the Court,

---

Eric R. Linhardt, Judge

ERL/jcr

cc: Angela Lovecchio, Esq.  
Lindsay Scheller, Esq.  
Gary Weber, Esq. (Lycoming Reporter)