

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT O.P. 65.37

DARLENE EILEEN HARPER	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
	:	
v.	:	
	:	
	:	
SHAWN NYE	:	
	:	
Appellant	:	No. 680 MDA 2023

Appeal from the Order Entered April 19, 2023
In the Court of Common Pleas of Northumberland County Civil Division at
No(s): CV-2023-00473

BEFORE: BOWES, J., LAZARUS, J., and STEVENS, P.J.E.*

MEMORANDUM BY LAZARUS, J.:

FILED: JANUARY 18, 2024

Shawn Nye appeals from the order, entered in the Court of Common Pleas of Northumberland County, granting Appellee Darlene Eileen Harper's protection from abuse (PFA) petition. **See** 23 Pa.C.S.A. § 6102(a)(3). After careful review, we affirm.

Nye and Harper were involved in a romantic relationship for nine years and were living together in Harper's Sunbury, Pennsylvania home, at the time of the instant matter. On March 14, 2023, Harper filed a PFA petition against Nye alleging that, on the evening of March 13, 2023, Nye returned home heavily intoxicated "got nose-to-nose" with Harper and was "screaming" at her. PFA Petition, 3/14/23, at 6. Harper went upstairs to retrieve clothes for Nye and then, as she descended the stairs, Nye "block[ed her]" with his body

* Former Justice specially assigned to the Superior Court.

and arms,” preventing her from going by him. ***Id.*** (unpaginated). Nye continued to scream at Harper and, after he refused to leave the house despite her requesting he leave “10+ times,” Harper alleges that Nye “escalated the argument,” prompting Harper to finally call the police. ***Id.*** (unpaginated). Following an *ex parte* hearing, the court found Harper was “in immediate and present danger of abuse” and issued a temporary PFA order against Nye, preventing him from abusing, harassing, stalking, threatening, or attempting to threaten to use physical force against Harper. ***See*** Temporary PFA, 5/14/23, at 1; ***see also*** 23 Pa.C.S.A. § 6107(b). Nye was also evicted from Harper’s residence and was generally prohibited from having “**ANY CONTACT**” with Harper by telephone or any other means, including through third parties. ***Id.*** at 2 (emphasis in original).

On April 19, 2023, the court held a final PFA hearing at which Harper, Nye, and Sheriff’s Deputy Andrew Plank testified. At the hearing, Harper testified that on the evening of March 13, 2023, Nye came home drunk, stumbled through the house, and refused to leave the house despite Harper’s repeated requests. ***See*** N.T. Final PFA Hearing, 4/19/23, at 5. At that point, Harper went upstairs to get Nye clothes for him to stay at his mother’s home that evening and, on her way down the stairs, Nye “restricted [Harper] from coming down the step, screaming in [her] face, and spit in [her] face.” ***Id.*** “At that point, [Harper] called the police. ***Id.*** Harper testified that since she filed the PFA petition, Nye drove “pas[t her] home countless, countless times.” ***id.*** at 5.

Nye, on the other hand, testified that Harper instigated the argument on the evening of March 13th. Specifically, he testified that Harper kept yelling at him and berating him to “get out,” *id.* at 14, and then “cut him off so [he] couldn’t go up the steps to obtain anything.” *Id.* at 14-15. Nye testified that he “proceeded up the steps . . . [and then Harper came] rushing down the stairs with clothes [and was] in [his] face, yelling at [him].” *Id.* at 15. Nye denied ever spitting on Harper during the argument, *id.* at 16-17, and stated that he has never attempted to assault or physically assaulted Harper, and has never threatened her, or harmed her. *Id.* at 17.

Deputy Plank testified that he served a copy of the notice of the PFA petition and hearing on Nye and was present when Nye filled out a weapons relinquishment form in the Sheriff’s Office. *Id.* at 22. Deputy Plank also testified that Harper called him to tell him that Nye was driving back and forth in front of her house, *id.* at 23; however, Deputy Plank indicated that the call was made at roughly the same time that Nye was present in the Sheriff’s Office being served and filling out PFA paperwork. *Id.*

At the conclusion of the hearing, the trial judge entered a final PFA order against Nye, effective for three years, stating, on the record:

I’m going to grant the PFA, and I’m going to grant it on the false imprisonment. There was an interference with her liberty. She’s in her home, granted that was the home that they had shared, she’s trying to come down the stairs, and he prevented her from doing that.

Id. at 25-26.

Nye filed a timely notice of appeal and Pa.R.A.P. 1925(b) concise statement of errors complained of on appeal, although it does not appear that such a statement was ordered by the court. On appeal, Nye raises the following issue: "Was the testimony at the [PFA h]earing sufficient to prove[,] by a preponderance of the evidence[,] that [] Nye falsely imprisoned [] Harper when they argued on a staircase?" Appellant's Brief, at 7.

The PFA defines abuse as:

(i) intentionally, knowingly, or recklessly causing bodily injury; (ii) placing another in reasonable fear of imminent bodily injury; **(iii) infliction of false imprisonment**; (iv) physically or sexually abusing minor children; or, (v) knowingly engaging in a course of conduct or repeatedly committing acts towards another person, including following the person, without proper authority, under circumstances which place the person in reasonable fear of bodily injury.

23 Pa.C.S.A. § 6102(a) (emphasis added). A PFA petitioner must prove the allegation of abuse by a preponderance of the evidence. "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**, 786 A.2d 961, 968 (Pa. 2001).

Moreover, our Court has recognized that an *ex parte* hearing to determine whether a court should issue a temporary PFA order cannot qualify as the evidentiary hearing required by section 6107(a). **Drew v. Drew**, 870 A.2d 377, 378 (Pa. Super. 2005). Rather, the two hearings require different standards of proof. **Id.** The *ex parte* hearing requires the petitioner to convince the court that he or she is in immediate and present danger of abuse,

while the evidentiary hearing requires the petitioner to prove the allegations of abuse by a preponderance of the evidence. *Id.*; 23 Pa.C.S. § 6107.

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) (citation omitted).

Nye claims that there was insufficient evidence to grant the PFA petition where he and Harper had a "brief argument on a staircase in which [Harper's ability to] move[] **was arguably interfered with** for a moment [and, thus,] does not rise to the [level of] substantial interference with liberty required by the [PFA] statute." Appellant's Brief, at 8 (emphasis added).

A person commits false imprisonment when he "knowingly restrains another unlawfully so as to interfere **substantially** with [a victim's] liberty." 18 Pa.C.S.A. § 2903(a) (emphasis added). "In determining the magnitude of restraint necessary for false imprisonment, this Court has recognized that false imprisonment covers restraints which are less serious than those necessary for the offenses of kidnapping and unlawful restraint." *In the Interest of M.G.*, 916 A.2d 1179, 1181-82 (Pa. Super. 2007). Because we construe the word "substantially" according to its plain meaning, *see* 1 Pa.C.S.A. § 1903, our Court has determined that "the [l]egislature intended false imprisonment to cover restraints where an individual's liberty is

interfered with in an ample or considerable manner.” **Id.** (citing Merriam Webster’s Collegiate Dictionary 1174 (10th ed. 1997)). Finally, physical force or contact need not occur in order to prove that someone has “restrain[ed] another unlawfully.” **See M.G., supra** at 1182 (making threats or intimidating another “may be the tool used by an offender ‘in restraining another unlawfully’” for false imprisonment).

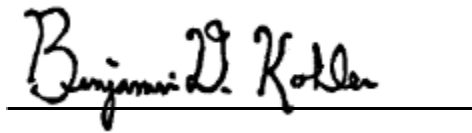
At the PFA hearing, the relevant evidentiary proceeding in this matter, Harper testified that Nye “restricted [her] from coming down the step[s], scream[ed] in [her] face, and spit in [her] face. At that point[, she] then called the police.” N.T. PFA Hearing, 4/19/23, at 5. **See also id.** at 8 (Harper testifying on cross-examination that “[Nye] wouldn’t let [her] down the stairs”). Additionally, the trial judge found Harper “to be candid and credible.” Trial Court Opinion, 5/17/23, at 1; **see Fonner, supra**.

Viewing the evidence in the light most favorable to the Commonwealth as the verdict winner, **M.G., supra**, we conclude that there was sufficient evidence to prove false imprisonment, by a preponderance of the evidence, where Nye admittedly and amply interfered with Harper’s freedom of movement when he prevented her from passing by him to descend the staircase all the while screaming in her face and spitting at her. **See id.** at 1182 (sufficient evidence to prove false imprisonment where “defendant restrained victim and kept her in area where she did not wish to remain”);

Commonwealth v. Belotte, 296 A.3d 570 (Pa. Super. 2023) (Table),¹ *appeal denied*, 67 EAL 2023 (Pa. 2023), (evidence sufficient to prove defendant interfered with victim's liberty and ability to leave her home blocking her path on stairs, warning her that she was not "going anywhere," and only relenting after police intervention).

Order affirmed.

Judgment Entered.

A handwritten signature in black ink, reading "Benjamin D. Kohler", is written over a horizontal line.

Benjamin D. Kohler, Esq.
Prothonotary

Date: 1/18/2024

¹ **See** Pa.R.A.P. 126(b)(non-precedential decisions filed after May 1, 2019, may be cited for persuasive value).