

**IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY,  
PENNSYLVANIA**

<b>QA,</b>		:	<b>No. 20-20931</b>
	<b>Plaintiff</b>	:	
		:	
	<b>vs.</b>	:	<b>CIVIL ACTION - LAW</b>
		:	
<b>YS,</b>		:	
	<b>Defendant</b>	:	<b>Motion for Reconsideration</b>

**OPINION**

This matter is before the Court on a Motion for Reconsideration filed by Plaintiff regarding the denial of a Final Protection From Abuse Order (hereinafter “PFA”). To follow is the relevant procedural and factual history.

On November 20, 2020, a Temporary PFA was entered in this matter relating to an incident that occurred on November 11, 2020 between Plaintiff and Defendant at the Cochran Primary School in Williamsport, Pennsylvania. The Temporary Order listed both Plaintiff and the parties’ minor child as Protected Parties. A hearing on whether or not a Final PFA should be entered was held on January 7, 2021 at which time Plaintiff appeared and was represented by Lindsay Walker, Esquire and Defendant appeared and was unrepresented. At the hearing, Plaintiff and Defendant both testified as well as the principal of the school, TB, and two other witnesses.

On the date of the incident, Plaintiff was driving her daughter to school with her sister, her friend, and three other minor children in the vehicle. After she was parked, she got out of the vehicle and approached the Defendant, who had

been standing near the school waiting for her to arrive with their child. Plaintiff and Defendant began arguing and, according to Plaintiff, Defendant grabbed her jacket and pulled her away from the vehicle so that he could get to the child who was still in the vehicle. According to Plaintiff's sister, Defendant "banged" Plaintiff against the car.

Defendant testified that he came to the school that day because he had not seen his daughter for several years and wanted to give her a gift. He stated that he has never hurt Plaintiff before and, specifically relating to this incident, did not touch Plaintiff.

Because TB was the only uninterested, unbiased witness who testified at the hearing, the Court gave his testimony the greatest weight. He testified that on the date of the incident, he was standing on the sidewalk and witnessed the interactions between Plaintiff and Defendant. He saw the Defendant first, who looked like he was waiting for someone to show up, when the Plaintiff pulled up to the school in her vehicle. TB saw Plaintiff and Defendant approach each other and engage in a heated conversation. Then he saw Defendant approach Plaintiff's car and say "she's my daughter. I have a right to see her, too." Both Plaintiff and Defendant were speaking to one another in an elevated tone. He did see Defendant move toward Plaintiff's vehicle and come "face-to-face" with the Plaintiff. At no point, however, did he see any physical contact occur between Plaintiff and Defendant. Specifically, he did not witness Defendant slam Plaintiff into the car.

After hearing all testimony and evidence presented, the Court found that the Plaintiff had not met her burden to prove abuse pursuant to 23 Pa.C.S.A. § 6102 and entered an Order denying the Final PFA on January 7, 2021.

Plaintiff filed a Motion for Reconsideration on February 3, 2021 which the Court granted on February 8, 2021. A hearing on the reconsideration was held on March 12, 2021 at which time Plaintiff appeared and was represented by Lindsay Walker, Esquire and Defendant appeared and was unrepresented. Plaintiff indicated that she was no longer seeking a PFA for the child, only for herself. Plaintiff set forth three arguments supporting her request for a Final PFA.

First, she states that a PFA should be granted because she has proven that the Defendant placed her in reasonable fear of bodily harm<sup>1</sup> when he “suddenly appeared” at the child’s school after not being around for several years and came into close proximity of the Plaintiff. While it is disputed whether Plaintiff and Defendant came into physical contact with one another, Plaintiff argues that, pursuant to the case of *Burke ex rel. Burke v. Bauman*,<sup>2</sup> physical contact is not necessary to prove reasonable fear. Plaintiff also states that her fear was reasonable because a third party felt the need to call the police.

Second, Plaintiff states that her PFA should be granted because she has proven that Defendant engaged in a course of conduct that placed her in reasonable fear of bodily injury.<sup>3</sup> She asserts that a “course of conduct” can be a

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<sup>1</sup> Under 23 Pa.C.S.A. § 6102(a)(2).

<sup>2</sup> 814 A.2d 206 (Pa. Super. 2002).

<sup>3</sup> Under 23 Pa.C.S.A. § 6102(a)(5).

series of action, however short the incident. Here, Plaintiff states, Defendant's verbal arguments, the fact that he moved closer to Plaintiff's vehicle, and the fact that he showed up to the school unannounced is enough to establish a course of conduct.

Finally, Plaintiff argues that the legislature intended for PFAs to be in place at the early stages of abuse, to prevent further abuse from occurring. Here, the first contact that Defendant had with the Plaintiff for several years ended in a heated argument. Plaintiff argues that this is a "text book red flag," and is an early sign of future abuse.

While the Court recognizes and understands Plaintiff's arguments, what this comes down to is the Court's credibility determination of the witnesses. TB testified that both Plaintiff and Defendant, not just the Defendant, were yelling very loudly at one another. *See January 7, 2021 Transcript at page 7, lines 4.* At no point did he see any physical contact or witness the Defendant "grab [Plaintiff] out of her jacket and slam her body onto the car." *See January 7, 2021 Transcript at page 7, lines 10-13; page 9, line 19 to page 10, line 2; and page 7, lines 16-20.* TB also did not recall hearing any threats of violence. *See January 7, 2021 Transcript at page 10, lines 14-16.* Finally, he testified that, when asked, both Plaintiff and Defendant walked away from the argument. *See January 7, 2021 Transcript at page 9, lines 16-18.*

Additionally, Plaintiff testified that she and the Defendant were arguing about the custody of their child. *See January 7, 2021 Transcript at pages 14 and 15,*

*generally*. Regarding the incident itself, Plaintiff uses several different words to describe Defendant's actions. In the petition, Plaintiff stated that the Defendant was "hitting [her] body off the car." See *January 7, 2021 Transcript at page 12, lines 11-12*. At the hearing, Plaintiff testified that he "banged" her against the car and then that he "pushed" her against the car. See *January 7, 2021 Transcript at page 16, line 2 and page 19, line 15*. SC, Plaintiff's sister, testified that Defendant was "pushing [Plaintiff] against the car or whatever the case may be" with his hands, not his body. See *January 7, 2021 Transcript at page 26, lines 22-23 and page 30, lines 15-17*.

It is obvious that a dispute occurred on the date in question. Plaintiff and Defendant were both upset and yelling at one another over a sensitive subject – their child. Based upon TB's testimony, Defendant's testimony, and the fact that Plaintiff's description of the force used upon her changes with her testimony, the Court finds that no physical contact occurred. Any physical contact that did occur arose out of the fact that Defendant was attempting to see his daughter, who was located in the vehicle, and Plaintiff was blocking the vehicle with her body. Even if physical conduct between Plaintiff and Defendant occurred, the Court finds that it was incidental to the argument, not intentional, and not intended to harm the Plaintiff. Additionally, the level of conflict displayed during the incident occurred as a result of *both* Plaintiff's and Defendant's actions. In reviewing the testimony given at the time of the hearing, the Court finds that no abuse occurred. Further, the Court holds that Plaintiff's and Defendant's actions were similar in nature and do not

support that Defendant acted in a way that placed Plaintiff in “reasonable” fear of bodily harm.

**ORDER**

**AND NOW**, this 19<sup>th</sup> day of **March, 2021**, having reconsidered the testimony presented by Plaintiff at the hearing held on January 7, 2021, the Court finds that Plaintiff has failed to establish cause to reverse the Court's prior Order. Therefore, the Order entered January 7, 2021 denying Plaintiff's request for a Final Protection From Abuse Order shall remain in effect.

By the Court,

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Ryan M. Tira, Judge

RMT/ads

cc: Lindsay Walker, Esq.  
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