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Katsenelenbogen v. Katsenelenbogen:

Under the Domestic Violence Statute the Standard for Issuing a Protective Order is Whether a Reasonable Person in the Applicant's Position Fears Serious Bodily Harm

By Ryan N. Hoback

The Court of Appeals of Maryland held the standard for issuance of a protective order under the domestic abuse statute is an individualized objective one, which views the situation from the perspective of a reasonable person in the applicant's position. *Katsenelenbogen v. Katsenelenbogen*, 365 Md. 122, 775 A.2d 1249 (2001).

Sergey Katsenelenbogen ("husband") and Janet Katsenelenbogen ("wife") were having marital problems. The husband fired the couple's live-in nanny claiming that he needed the nanny's room because he was unwilling to share a bedroom with his wife. During the ensuing argument between husband and wife, he allegedly shoved his wife and one of their children.

The wife filed a petition for protection from domestic violence in the Circuit Court for Montgomery County. The court entered an immediate *ex parte* order. At a full hearing, the court found the husband pushed the wife and granted the protective order.

The husband appealed to the Court of Special Appeals of Maryland, arguing his wife failed to prove "abuse", within the meaning of domestic violence law. He also argued if abuse occurred, it was limited to the one "isolated and relatively non-serious" incident, and the court erred in granting the maximum relief affordable under the statute.

The court of special appeals vacated the protective order finding there was no indication the trial court applied an objective standard when determining the reasonableness of the wife's fear. The court found there was

no "indication the court attempted to tailor the terms and duration of the order to the conduct." The court remanded the case for the circuit court to consider if an order was appropriate, and if so, its terms.

The wife appealed to the Court of Appeals of Maryland arguing the court of special appeals' opinion suggested certain types of domestic abuse are permissible. The wife also claimed the holding imposed potential harm to future victims of domestic violence as a "new substantive policy consideration in protective order cases." Finally, the wife argued that the "reasonable person" standard was inadequate to determine the reasonableness of the victim's fear.

The court of appeals began its analysis by reviewing the purpose of the domestic abuse statute. *Katsenelenbogen*, 365 Md. at 134, 775 A.2d at 1256. The statute is designed to protect and assist victims of domestic violence by providing an "immediate and effective remedy." *Id.* (quoting *Coburn v. Coburn*, 342 Md. 244, 674 A.2d 951 (1996)). The statute provides a broad range of remedies to separate the parties and avoid abuse in the future. *Id.* The principal goals of the statute are preventive, protective and corrective, not punitive. *Id.*

Next, the court addressed the wife's argument that the appellate court's opinion permitted shoving minor children and spouses as a tolerable type of domestic violence. *Id.* at 134, 775 A.2d at 1257. The court did not read the court of special appeals' opinion as holding "shoving one's spouse or minor child are tolerable acts of physical domestic violence that will not justify

protective orders." *Id.* at 135, 775 A.2d at 1257. The court did not believe the court of special appeals intended such a conclusion. *Id.* The court reasoned if the court of special appeals intended such a conclusion, it would have reversed the protective order without remand. *Id.*

The court of appeals admitted the "issuance of a protective order and the provision of this kind of relief . . . may have consequences in other litigation," such as divorce, support, or child access cases. *Id.* at 137, 775 A.2d at 1258. However, the court reiterated that the concern of a court is "to do what is reasonably necessary—no more and no less—to assure the safety and well-being of those entitled to relief." *Id.*

The court turned its attention to clarifying the proper standard for issuance of a protective order. *Id.* at 138, 775 A.2d at 1259. A protective order may only be issued under Section 4-506(c) of the Family Law Article when at least one act of abuse is proven by clear and convincing evidence. *Id.* at 130, 775 A.2d at 1254. In accordance with Section 4-501(b), abuse can be an act that causes serious bodily harm, an act that places a person eligible for relief in fear of imminent serious bodily harm, assault in any degree, an act or attempt of rape or sexual offense or false imprisonment. *Id.* at 130-31, 775 A.2d at 1254.

The court held the standard for issuance of a protective order is an "individualized objective one, one that looks at the situation in the light of the circumstances as would be perceived by a reasonable person in the petitioner's position." *Id.* at 138, 775

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A.2d at 1259. An abused person may be particularly aware of non-verbal signals that threatened them in the past but which someone else might not understand to be threatening. *Id.* at 139, 775 A.2d at 1259. A court must also take into account any vulnerability of the victim "by virtue of physical, mental or emotional condition or impairment." *Id.* at 139, 775 A.2d at 1260.

This case addressed an unresolved issue in a matter of public concern and established a rule for the future. In so holding, the court strengthened the position of domestic violence victims by providing for protection orders to be issued viewing the situation from the eyes of the individual. The court of appeals made a strong statement, evidenced by its taking a moot case, that even acts amounting to minor battery constitute domestic violence. The court's clarification of the proper standard for issuing a protective order has reduced the burden to all that seek such an order. By affirming the notion that a court must look through the eyes of the victim without considering any future litigation between the parties, the abused now have sharper teeth in the fight to combat the growing problem of domestic violence. **ATTENTION ALUMNI**

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