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NOTICE: Summary decisions issued by the Appeals Court pursuant to M.A.C. Rule 23.0, as appearing in 97 Mass. App. Ct. 1017 (2020) (formerly known as rule 1:28, as amended by 73 Mass. App. Ct. 1001 [2009]), are primarily directed to the parties and, therefore, may not fully address the facts of the case or the panel's decisional rationale. Moreover, such decisions are not circulated to the entire court and, therefore, represent only the views of the panel that decided the case. A summary decision pursuant to rule 23.0 or rule 1:28 issued after February 25, 2008, may be cited for its persuasive value but, because of the limitations noted above, not as binding precedent. See Chace v. Curran, 71 Mass. App. Ct. 258, 260 n.4 (2008).

COMMONWEALTH OF MASSACHUSETTS

APPEALS COURT

25-P-721

M.L.

vs.

B.M.

MEMORANDUM AND ORDER PURSUANT TO RULE 23.0

The defendant appeals from an abuse prevention order issued against him by a judge of the District Court after a two-party hearing with notice, see G. L. c. 209A, §§ 1, 3, and from the judge's denial of three posthearing motions. We affirm.

Background. We summarize the relevant facts and procedural history, reserving certain details for later discussion. On January 31, 2025, the plaintiff obtained an ex parte abuse protection order against the defendant. See G. L. c. 209A, § 4. In her affidavit, filed in support of her claim, the plaintiff averred that since a Probate and Family Court judge awarded her

sole legal and primary physical custody of the parties' child,¹ the defendant had intimidated and frightened her through "continued episodes of harassment," including "sending multiple threatening emails" to the plaintiff and her lawyer. The plaintiff also represented in her affidavit that on November 18, 2024, the defendant followed the plaintiff and their child, who was ill, into a supermarket parking lot where he "demand[ed] in an angry and aggressive tone that [she] hand over [the child]" for the defendant's parenting time. When the plaintiff did not comply, the defendant followed her into the supermarket, making her "very upset and nervous." The plaintiff cited this incident as an example of the defendant's "pattern of harassing behaviors and threatening conduct."

The matter was scheduled for a two-party hearing with notice to the defendant; that hearing was held before a District Court judge² on February 14, 2025. Both parties appeared at the hearing and testified. Plaintiff's counsel informed the judge about the custody matter between the parties in the Probate and Family Court, as well as that the defendant had filed a pending

¹ The child was five years old at the time of the two-party hearing in February 2025.

² The matter was apparently transferred after the ex parte order issued; the judge at the two-party hearing is not the same judge who issued the ex parte order.

appeal in that matter. The judge reviewed a gatekeeper order that a Probate and Family Court judge entered against the defendant in response to his "excessive filings" during the custody litigation. The judge also reviewed copies of communications that the defendant had sent to the plaintiff through e-mail and a parenting application, Our Family Wizard; plaintiff's counsel alleged that the messages "threatened . . . continued court action" and "violent contempts."³ After reviewing the messages, the judge noted that "every single email is acrimonious and unpleasant" and that the defendant was "very antagonistic," but the judge found that the messages included "nothing . . . that's threatening."

The judge asked the plaintiff additional questions about her reasons for seeking an extension of the order. The plaintiff testified, inter alia, that "there were moments" of "physical aggression, like hitting walls, banging walls"; that the defendant punched a hole in something when he was not given help cleaning something up; and that when the plaintiff was pregnant, there was an instance in which the parties "got in an argument," the plaintiff "smacked" the defendant, and then the

³ It is not clear from the record whether the messages in the appellate record are the same ones that were introduced at the hearing, but nothing in our decision depends on that point.

defendant "kicked the door down off the hinges," almost hitting her. The plaintiff also told the judge that during her approximately four-year relationship with the defendant, he had "scream[ed] at [her] in [her] face" and that this type of conduct was "just constant." The plaintiff testified, consistent with her affidavit, about the incident a few months earlier when the defendant followed her into the supermarket after she took their child to a medical appointment. She told the judge that the child saw the defendant's behavior and later asked "why daddy was yelling at [her]."

In response to the judge asking whether she was "afraid that [the defendant] . . . will physically harm [her]," the plaintiff answered, "Yes." Asked if her fear was "based upon [the defendant's] emails," the plaintiff responded that it was "based upon knowing our past" and on her experience with the defendant's conduct "when he doesn't get his way." She also ~~told the judge that she was "worried about the escalation" of~~ the defendant's conduct in connection with the custody judgment.

The defendant testified that he had never threatened the plaintiff, that the plaintiff's account of the incident during her pregnancy was "a blatant lie," and that he went to the supermarket to obtain information from the pharmacist about how

to treat the child's illness during the parenting time he expected to have that day, not to follow the plaintiff.

After considering the evidence, the judge made clear oral findings on the record that (1) although the defendant's e-mail and Our Family Wizard messages involved "nothing that . . . actually comes out and threatens," the defendant's conduct was "threatening" and "menacing," (2) the defendant's conduct was "escalating," causing the plaintiff to fear him, and (3) inferentially, the plaintiff's fear was reasonable.⁴ The judge extended the ex parte order for one year. The defendant filed posthearing motions for findings of fact and rulings of law, for reconsideration, and to reopen the case to introduce additional evidence. The judge denied each of these motions and this appeal followed.

Discussion. 1. Extension of ex parte order.⁵ A plaintiff seeking an extension of an ex parte abuse prevention order at the hearing after notice bears the burden of proving by a preponderance of the evidence that the plaintiff is suffering

⁴ The judge said, "I can see [the plaintiff's] concern for escalation."

⁵ Although the defendant argues that the ex parte order should not have issued, because we affirm the subsequent order after notice, the ex parte order has been superseded and that matter is moot. See V.M. v. R.B., 94 Mass. App. Ct 522, 524-525 (2018).

from abuse. See Noelle N. v. Frasier F., 97 Mass. App. Ct. 660, 664 (2020). As relevant here, "abuse" is defined as "placing another in fear of imminent serious physical harm."⁶ G. L. c. 209A, § 1. "When a person seeks to prove abuse by 'fear of imminent serious physical harm,' our cases have required in addition that the fear be reasonable" (citation omitted). Iamele v. Asselin, 444 Mass. 734, 737 (2005). The judge must consider the evidence of the defendant's "words and conduct 'in the context of the entire history of the parties' hostile relationship.'" Vittone v. Clairmont, 64 Mass. App. Ct. 479, 487 (2005), quoting Pike v. Maguire, 47 Mass. App. Ct. 929, 930 (1999).

"We review the extension of a c. 209A order 'for an abuse of discretion or other error of law.'" Latoya L. v. Kai K., 104 Mass. App. Ct. 173, 177 (2024), quoting Constance C. v. Raymond R., 101 Mass. App. Ct. 390, 394 (2022). "[W]e will not substitute our judgment for that of the trier of fact. We do, however, scrutinize without deference the propriety of the legal

⁶ General Laws c. 209A, § 1, provides four alternative definitions of "abuse." We affirm under the second definition. G. L. c. 209A, § 1 (subsection "[b]" under "abuse"). Accordingly, although the parties dispute whether the plaintiff proved her entitlement to an extension of the ex parte order based on her showing of abuse by "coercive control," see G. L. c. 209A, § 1, we need not and do not reach that question.

criteria employed by the trial judge and the manner in which those criteria were applied to the facts." Calliope C. v. Yanni Y., 103 Mass. App. Ct. 722, 725 (2024), quoting Commonwealth v. Boucher, 438 Mass. 274, 276 (2002). In conducting our review, "[w]e accord the credibility determinations of the judge who heard the testimony of the parties . . . [and] observed their demeanor . . . the utmost deference" (quotation omitted). Noelle N., 97 Mass. App. Ct. at 664, quoting Yahna Y. v. Sylvester S., 97 Mass. App. Ct. 184, 185 (2020).

It is apparent from the transcript of the two-party hearing that the judge permitted both parties an opportunity to present their evidence and arguments and that he conducted an even-handed assessment of the evidence. See C.O. v. M.M., 442 Mass. 648, 659 (2004) (incumbent on judge to ensure "all parties be given a fair and equal opportunity to be heard" at extension hearing). Moreover, and critically, we can readily discern the basis of the judge's decision to extend the order from the factual findings he made on the record. This is because the judge credited the plaintiff's account of past threats to her physical safety, an escalation in the defendant's "menacing" behavior, and the plaintiff's resulting fear (which the judge found reasonable). The judge was also aware of the defendant's ongoing dissatisfaction with the judgment granting the plaintiff

primary custody of the parties' child.⁷ See Iamele, 444 Mass. at 740 (factors judge should consider in deciding whether to extend abuse prevention order include, inter alia, "ongoing child custody or other litigation that engenders . . . hostility"); Vittone, 64 Mass. App. Ct. at 486-487. Given the judge's findings, we are satisfied both that the plaintiff demonstrated her entitlement to the order based on her reasonable fear of imminent serious physical harm and that the judge acted within his discretion in extending the ex parte order on that basis. See G. L. c. 209A, § 1.

2. Posthearing motions. a. Motion for findings of fact and rulings of law. As we have noted, the judge made the findings required to explain his order, including explicit credibility determinations, clearly and specifically on the

⁷ We are not persuaded that the judge abused his discretion by considering information provided by the plaintiff and her attorney about a report prepared in the custody action by a guardian ad litem. The defendant's hearsay objection was properly overruled; in this context, it is well-settled that the rules of evidence "regarding hearsay . . . should be applied with flexibility, subject to considerations of fundamental fairness." Noelle N., 97 Mass. App. Ct. at 661 n.3. More to the point, to the extent that plaintiff's counsel provided some general examples of the information included in the report, the evidence was cumulative of testimony the plaintiff gave at the hearing that the judge credited. Cf. Adoption of Cecily, 83 Mass. App. Ct. 719, 724 (2013) (assuming arguendo that evidence was improperly admitted at trial, defendant was not prejudiced where evidence "was merely cumulative of properly admitted evidence").

record during the hearing. The judge was not required to provide the written findings and rulings that the defendant sought. See G.B. v. C.A., 94 Mass. App. Ct. 389, 396 (2018) (where appellate court is "able to discern a reasonable basis for the order in the judge's rulings and order, no specific findings are required").

b. Motion for reconsideration. The defendant's challenge to the denial of his motion for reconsideration turns on his contention that the plaintiff obtained the extension by "fraud." The argument is not persuasive. We recognize that in the plaintiff's affidavit and in her hearing testimony, the plaintiff characterized the defendant's communications to her and her lawyer as "threatening." We also acknowledge that the judge interpreted the communications somewhat differently; he concluded that they did not include direct threats but that the defendant's behavior had escalated and his conduct was threatening. We do not, however, find anything in the record to show that the judge discredited the plaintiff based on this difference in perspective -- to the contrary, the judge explicitly found that the messages had a consistently "angry" and "acrimonious" flavor.

Moreover, the judge's decision did not depend on the accuracy of the plaintiff's assessment of the messages as

threats. The judge's contemporaneous findings reflect that although he did not find that the defendant's messages were threatening, he did consider their tone and found that they were angry; he also took into account the plaintiff's testimony about the defendant's past history of violence, the ongoing appeal from the custody judgment, the defendant's "escalating" conduct, and the plaintiff's resulting fear. The defendant's motion for reconsideration was, at bottom, a challenge to the judge's credibility assessments. Given the deference we accord to those assessments, see Noelle N., 97 Mass. App. Ct. at 664, we decline to disturb the judge's denial of the motion.

c. Motion to reopen the evidence. We are likewise unpersuaded that the judge infringed on the defendant's right to due process by denying his motion to reopen the hearing to present additional evidence. See Dominick v. Dominick, 18 Mass. App. Ct. 85, 90 (1984) (whether to reopen trial for new evidence is left to discretion of trial judge). Nothing in the defendant's original motion or in his appellate briefing supports his claim that the evidence he sought to introduce at a reopened hearing -- a video recording refuting the plaintiff's account of his conduct in the supermarket parking lot, additional messages sent between the parties through Our Family Wizard, and messages between the plaintiff and others, including

her attorney and the child's doctor -- was "previously unavailable, wrongfully omitted, or not submitted due to procedural limitations," as the defendant suggests.

"[A] motion that seeks to vacate retroactively an order issued under c. 209A 'on the ground of newly discovered evidence cannot properly be granted unless it is found that the evidence relied on was not available to the party seeking [relief] for introduction at the original trial by the exercise of reasonable diligence'"

Mitchell v. Mitchell, 62 Mass. App. Ct. 769, 775 (2005), quoting DeLuca v. Boston Elevated Ry. Co., 312 Mass. 495, 497 (1942).

The defendant has not demonstrated that he made the required showing through his motion, and we therefore discern no abuse of discretion in the judge's decision to deny the motion to reopen the evidence. See Dominick, 18 Mass. App. Ct. at 90. See also Weber v. Coast to Coast Med., Inc., 83 Mass. App. Ct. 478, 481 (2013).

3. Defendant's remaining arguments. The defendant's remaining arguments on appeal were not preserved below and are waived. See, e.g., G.B., 94 Mass. App. Ct. at 397.

4. Plaintiff's requests for appellate attorney's fees. "If an appellate court determines that an appeal in a civil case is frivolous, it may award just damages and single or double costs to the appellee, and such interest on the amount of the judgment as may be allowed by law." Mass. R. A. P. 25, as appearing in 481 Mass. 1654 (2019). The plaintiff cites this

rule and requests that we award her appellate attorney's fees.⁸ Although we exercise our discretion to decline the plaintiff's request, we emphasize that our decision is exactly that -- an exercise of discretion. Our ruling should not be read as a determination that the request lacked a proper basis. See Avery v. Steele, 414 Mass. 450, 455 (1993).

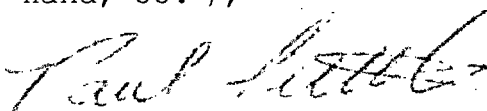
Order extending G. L. c. 209A
order, entered February 14,
2025, affirmed.

Order denying motion for
findings of fact and
conclusions of law
affirmed.

Order denying motion for
reconsideration affirmed.

Order denying motion to
reopen and admit additional
evidence affirmed.

By the Court (Henry, Singh &
Hand, JJ.⁹),


Clerk

Entered: April 24, 2026.

⁸ As one of the reasons for her request, the plaintiff cites concerns that the defendant used generative artificial intelligence in drafting his appellate brief. Without deciding, we note that at least two of the cases cited in the defendant's brief do not exist and that we are unable to find cases supporting certain quoted language in the brief.

⁹ The panelists are listed in order of seniority.

ABUSE PREVENTION ORDER (G.L. c. 209A) Page 1 of 2		DOCKET NO. 2511 RO 131		TRIAL COURT OF MASSACHUSETTS	
Plaintiff's Name Marcie Lombard		Defendant's Name & Address Brian M. McCarthy 52 Shawmut Ave Apt. #1 Marlboro, MA 01752		Alias, if any	
Name & Address Of Court Lowell District Court 370 Jackson St. Lowell, MA 01852				Date of Birth 3/16/1977	Sex: ☒ M ☐ F
				SS # (Last four digits only) XXX-XX-	Daytime Ph # ()
				Cell Phone # (781) 1308-8441	

VIOLATION OF THIS ORDER IS A CRIMINAL OFFENSE punishable by imprisonment or fine or both.

A. THE COURT HAS ISSUED THE FOLLOWING ORDERS TO THE DEFENDANT: *(only those items checked shall apply)*

☒ This Order was issued without advance notice because the Court determined that there is a substantial likelihood of immediate danger of abuse.

☐ This Order was communicated by telephone from the Judge named below to: Police Dept. _____ Police Officer _____

☒ 1. YOU ARE ORDERED NOT TO ABUSE THE PLAINTIFF by harming, threatening or attempting to harm the Plaintiff physically or by placing the Plaintiff in fear of imminent serious physical harm, or by using force, threat or duress to make the Plaintiff engage in sexual relations.

☒ 2. YOU ARE ORDERED NOT TO CONTACT THE PLAINTIFF, in person, by telephone, in writing, electronically or otherwise, either directly or through someone else, and to stay at least 100 yards from the Plaintiff even if the Plaintiff seems to allow or request contact. The only exceptions to this order are: a) contact as permitted in Sections 8, 9, 10 and 11 below; or b) by sending the Plaintiff, by mail, by sheriff or by other authorized officer, copies of papers filed with the court when that is required by statute or court rule.

☒ 3. YOU ARE ORDERED TO IMMEDIATELY LEAVE AND STAY AWAY FROM THE PLAINTIFF'S RESIDENCE, except as permitted in Sections 8 and 10 below, located at 1164 Concord St., Framingham, MA 01701 or wherever else you may have reason to know the Plaintiff may reside. The Court also ORDERS you (a) to surrender any keys to that residence to the Police; (b) not to damage any belongings of the Plaintiff or any other occupant; (c) not to shut off or cause to be shut off any utilities or mail delivery to the Plaintiff; and (d) not to interfere in any way with the Plaintiff's right to possess that residence, except by appropriate legal proceedings.

☐ If this box is checked, the Court also ORDERS you to immediately leave and remain away from the entire apartment building or other multiple family dwelling in which the Plaintiff's residence is located.

☒ 4a. YOU ARE ORDERED TO STAY AWAY FROM THE PLAINTIFF'S WORKPLACE located at IMPOUNDED WHEREVER THAT IS

☐ 4b. YOU ARE ORDERED TO STAY AWAY FROM THE PLAINTIFF'S SCHOOL located at _____

☐ 5a. THE COURT ORDERS that the Plaintiff's residential address not appear on the order.

☒ 5b. THE COURT ORDERS that the Plaintiff's workplace address not appear on the order.

☐ 5c. THE COURT ORDERS that the Plaintiff's school address not appear on the order.

☐ 6. CUSTODY OF THE FOLLOWING CHILDREN IS AWARDED TO THE PLAINTIFF:

NAME	AGE	NAME	AGE

☐ 7. YOU ARE ORDERED NOT TO CONTACT THE CHILDREN LISTED ABOVE OR ANY CHILDREN IN THE PLAINTIFF'S CUSTODY LISTED BELOW, either in person, by telephone, in writing, electronically or otherwise, either directly or through someone else, and to stay at least _____ yards away from them unless you receive written permission from the Court to do otherwise.

☐ You are also ordered to stay away from the following school(s), day care(s), other: _____

NAME	AGE	NAME	AGE

☐ 8. VISITATION WITH THE CHILDREN LISTED IN SECTION 6 IS PERMITTED ONLY AS FOLLOWS (may be ordered by Probate and Family Court only):

☐ Visitation is only allowed if supervised and in the presence of _____ at the following times _____ to be paid for by _____ (name) (third party), and not by you.

☐ Transportation of children to and from this visitation is to be done by _____ (name) (third party), and not by you.

☐ You may only contact the Plaintiff to arrange this visitation. Contact may be made only by ☐ phone, ☐ e-mail, ☐ text, ☐ other _____

☐ 9. YOU ARE ORDERED TO PAY SUPPORT IN THE FOLLOWING MANNER:

☐ \$_____ child support per _____ (week/month) by income withholding through the Department of Revenue. Defendant shall send payments to DOR at P.O. Box 55144, Boston, MA 02205-5144 until employer deductions begin.

☐ \$_____ child support per _____ (week/month) directly to the Plaintiff by mailing payments to _____

☐ \$_____ support for the Plaintiff per _____ (week/month) directly to the Plaintiff by mailing payments to _____

☐ Other orders: _____

☐ 10. YOU MAY PICK UP YOUR PERSONAL BELONGINGS in the company of police at a time agreed to by the Plaintiff.

☐ 11. YOU ARE ORDERED TO COMPENSATE THE PLAINTIFF for \$_____ in losses suffered as a direct result of the abuse, to be paid in full on or before _____, 20____ ☐ by mailing directly to the Plaintiff ☐ through the Probation Office of this Court.

☒ 12. THERE IS A SUBSTANTIAL LIKELIHOOD OF IMMEDIATE DANGER OF ABUSE. YOU ARE ORDERED TO IMMEDIATELY SURRENDER to the Marlboro, MA Police Department or to the police officer serving this order all guns, ammunition, gun licenses and FID cards. Your license to carry a gun, if any, and your FID card, if any, are suspended immediately.

• You must immediately surrender the items listed above, and also comply with all other Orders in this case.

• Subject to certain exceptions, purchase and/or possession of a firearm and/or ammunition while this order is in effect is a federal crime. 18 U.S.C. §§ 922(g)(8) and 925.

☐ 13. ON THE NEXT SCHEDULED HEARING DATE, the Court will hear testimony and other evidence regarding Section 8 of this order, which involves support for the Plaintiff and/or the minor children. You are hereby ordered to bring with you to the next scheduled hearing date any financial records in your possession (including your most recent tax return and your last four paystubs) that provide evidence of your current income.

☒ 14. YOU ARE ALSO ORDERED no abuse also includes not coercively controlling the plaintiff as that term is defined in G.L.C.209A § 1.

The Plaintiff must appear at scheduled hearings, or this Order will expire. The Defendant may appear with or without counsel, to oppose any extension or modification of this Order. If the Defendant does not appear, the Order may be extended or modified as defined by the Judge. For good cause, either the Plaintiff or the Defendant may request the Court to modify or rescind its scheduled expiration date.

ABUSE PREVENTION ORDER (G.L. c. 209A) Page 2 of 2		DOCKET NO. 2511 RO 131	TRIAL COURT OF MASSACHUSETTS
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☐ 15. Police reports are on file at the _____ Police Department.

☐ 16. OUTSTANDING WARRANTS FOR THE DEFENDANT'S ARREST:
(DOCKET #s) _____ (PCF #) _____
to _____

☐ 17. An imminent threat of bodily injury exists to the Plaintiff. Notice issued to _____ Police Department(s) by ☐ telephone ☐ other _____

Police

B. NOTICE TO LAW ENFORCEMENT *Defendant owns firearms*

☐ 1. An appropriate law enforcement officer shall serve upon the Defendant in hand a copy of the Complaint and a certified copy of this Order (and Summons), and make return of service to this Court. If this box is checked ☐, the following alternative service may instead be made, but only if the officer is unable to deliver such copies in hand to the Defendant:

☐ 2. Defendant Information Form accompanies this Order.

☐ 3. Defendant has been served in hand by the Court's designee: Name *Framingham* Date _____

DATE OF ORDER 1/31/2025	TIME OF ORDER 3:42	EXPIRATION DATE OF ORDER 2/14/2025	SIGNATURE OF JUDGE PRINT/TYPE NAME OF JUDGE <i>Jewell P. Williams</i>
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The above and any subsequent Orders expire on the expiration dates indicated. Hearings on whether to continue and/or modify Orders will be held on dates and times indicated. In the event the Court is closed on the date the Order is to expire, the Order shall remain in full force and effect and the hearing shall be continued until the next Court business date.

NEXT HEARING DATE: *2/14/2025*
at *9:40* ☐ A.M. ☐ P.M. Courtroom _____

☒ **C. MODIFICATION/EXTENSION** *Unlawful*

☒ This order was issued after a hearing at which the Plaintiff ☒ appeared ☐ did not appear and the Defendant ☒ appeared ☐ did not appear. The Court has ORDERED that the prior order issued *1/31/25* 20____ be MODIFIED as follows:

Parties shall abide by all P+F Court orders regarding minor child. #2 modified: Parties may have contact w/ child thru OFW. #3 modified: def may pick up child for parenting time at plaintiff's residence but must remain in vehicles.

☐ The expiration date of this order has been EXTENDED (See Below) ☐ OTHER MODIFICATION(S) _____

☒ Firearm surrender order continued. The items surrendered under paragraph 12 will NOT be returned since doing so would present a likelihood of abuse to the Plaintiff.

DATE OF THIS MODIFICATION <i>2/14/25</i>	EXPIRATION DATE OF ORDER <i>2/13/26</i>	SIGNATURE OF JUDGE PRINT/TYPE NAME OF JUDGE <i>Williams</i>
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TIME OF MODIFICATION: *10:02* ☒ A.M. ☐ P.M. NEXT HEARING DATE: *2/13/26* at *9* ☒ A.M. ☐ P.M. Courtroom *3*

☐ **D. MODIFICATION/EXTENSION**

☐ This order was issued after a hearing at which the Plaintiff ☐ appeared ☐ did not appear and the Defendant ☐ appeared ☐ did not appear. The Court has ORDERED that the prior order issued _____ 20____ be MODIFIED as follows:

☐ The expiration date of this order has been EXTENDED (See Below) ☐ OTHER MODIFICATION(S) _____

☐ Firearm surrender order continued. The items surrendered under paragraph 12 will NOT be returned since doing so would present a likelihood of abuse to the Plaintiff.

DATE OF THIS MODIFICATION:	EXPIRATION DATE OF ORDER:	SIGNATURE OF JUDGE PRINT/TYPE NAME OF JUDGE:
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TIME OF MODIFICATION: ☐ A.M. ☐ P.M. NEXT HEARING DATE: _____ at _____ ☐ A.M. ☐ P.M. Courtroom _____

☒ **E. PRIOR COURT ORDER TERMINATED**

This Court's prior Order is terminated. Law enforcement agencies shall destroy all records of such Order.

☐ TERMINATED AT PLAINTIFF'S REQUEST.

SIGNATURE OF JUDGE PRINT/TYPE NAME OF JUDGE	DATE OF ORDER	TIME OF ORDER ☐ A.M. ☐ P.M.
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WITNESS - FIRST OR CHIEF JUSTICE: *John P. Coffey*

A true copy attested by (Clerk, Magistrate, Asst.) Register of Probate
Benjamin Edward

Gmail

Brian McCarthy <coltoncustody@gmail.com>

FAR-30912 - Notice: FAR denied

1 message

SJC Full Court Clerk <SJCCommClerk@sjc.state.ma.us>
To: Coltoncustody@gmail.com

Wed, Jun 24, 2026 at 4:47 PM

Supreme Judicial Court for the Commonwealth of Massachusetts

Telephone

RE: Docket No. FAR-30912

M.L.

vs.

B.M.

Framingham District, MI No. 2549RO110065

A.C. No. 2025-P-0721

NOTICE OF DENIAL OF APPLICATION FOR FURTHER APPELLATE REVIEW

Please take note that on June 24, 2026, the application for further appellate review was denied.

Very truly yours,
The Clerk's Office

Dated: June 24, 2026

To: Victoria Arend Carbone, Esquire
B.M.

1 relationship history and given how the custody
2 case has gone and the communications between
3 them.

4 And those are referenced in the first two
5 paragraphs of Ms. Lombard's affidavit.

6 THE COURT: There's nothing in these
7 emails that's threatening.

8 I mean, it's all -- it's very pointed.
9 It's --

10 MS. LOMBARD: Threatening.

11 THE COURT: It's a very angry tone.

12 There's definitely undertones of anger
13 and frustration, and I would also add somewhat of
14 an inability to be collaborative in this effort
15 to raise their son.

16 He seems like he's -- everything is --
17 he's very antagonistic, acrimonious, whatever
18 other words you want to come up with.

19 There's nothing in here that's -- you
20 know, but nothing that he actually comes out and
21 threatens.

22 He seeks remedies in court, compliance
23 with the court order.

24 It's not -- they're unpleasant. Every
25 single line, every single email is acrimonious

1 I've never done that, and I want to hear from the
2 pharmacist what I have to do.

3 And she says that that's harassment.

4 How?

5 THE COURT: Well, that's not harassment.

6 MR. MCCARTHY: That's what she said.

7 THE COURT: I'm sure that she'll -- I'll
8 tell you.

9 MR. MCCARTHY: That's what she said.

10 THE COURT: And then -- but then -- and
11 then you get -- and then she gets this nasty
12 email from you.

13 Basically, what you're saying -- you
14 know, you got to know how to approach people and
15 how to talk to --

16 MR. MCCARTHY: But it doesn't constitute
17 threats, your Honor.

18 THE COURT: You know, this is a woman you
19 have a child with.

20 Why can't you --

21 MR. MCCARTHY: It's --

22 THE COURT: And you are -- you're
23 terrible to her.

24 MR. MCCARTHY: You're turning the finger
25 at me, but you're not acknowledging the fact

1 had failed to establish a likelihood of the
2 success of merits on the appeal denied the
3 motion.

4 I do have a copy of the Appeals Court
5 docket as well, if the Court wishes to see that.

6 THE COURT: Okay.

7 MS. CARBONE: So let me get that order.

8 THE COURT: Okay.

9 MS. CARBONE: So, truly, from my client's
10 perspective, he's been using the court process,
11 both in the probate and family court and in the
12 Appeals Court, as a way to continue to control
13 and to abuse her, and to engage in threatening
14 behavior towards her, which is obviously --

15 THE COURT: Well, that's what I hear, and
16 that's what I really need.

17 I mean, as far as what -- you know, he
18 does have a right to petition the court to --

19 MS. CARBONE: Sure.

20 THE COURT: But -- so I really can't look
21 at that as being abusive, that he's -- I mean, if
22 the Court sees it as harassing or, I mean, to the
23 point that they had to issue a gatekeeper order
24 against you, I mean, you're not helping yourself.

25 MR. MCCARTHY: I --

1 up child for parenting time at plaintiff's
2 residence, but must remain in vehicle.

3 MR. MCCARTHY: Your Honor, I have to
4 object for the record.

5 THE COURT: Okay. You can object.

6 I just find -- you know, I will state for
7 the record that she has -- that -- well, I'm
8 looking, not only her testimony, but I'm looking
9 at the entire case, both the probate case and
10 this case and your testimony in court today, that
11 there -- I can see her concern for escalation.

12 MR. MCCARTHY: What -- can you explain?

13 THE COURT: I can see her concern for an
14 escalating situation.

15 MR. MCCARTHY: Can the Court explain what
16 that escalation is and her fear --

17 THE COURT: There's the --

18 MR. MCCARTHY: -- for the record?

19 THE COURT: There's an increasing, a sort
20 of menacing and acrimonious conduct on your part.

21 And there's lots of evidence of that
22 because what -- you know, as I said, and I go
23 back, it's like the fifth time I've mentioned
24 it, but when the probate court order issues a
25 gatekeeper order because you are just inundating

1 them with filings constantly, that tells me that
2 there's --

3 MR. MCCARTHY: Your Honor, it's my right
4 to file a motion.

5 THE COURT: Well, you do.

6 But there's also --

7 MR. MCCARTHY: Your Honor --

8 THE COURT: You can overdo it.

9 MR. MCCARTHY: Your Honor --

10 THE COURT: Believe me, as a judge, I --
11 you can overdo it when it comes to -- we have --

12 MR. MCCARTHY: Your Honor, I filed three,
13 three motions.

14 THE COURT: There would be no gatekeeper
15 order if it was just three motions.

16 Obviously, it's not --

17 MR. MCCARTHY: But the gatekeeping order
18 was filed because of the (inaudible).

19 THE COURT: It's a lot more than that.
20 It's a lot more than that.

21 And I -- and you know what? I'll say
22 this.

23 I'm in court, I'm watching you, I'm
24 listening to you, I'm watching Ms. Lombard, I'm
25 looking at her face, I'm looking at her demeanor.

1 There is no immediate threat. There is
2 no danger. I've never threatened her at all.

3 I'm just trying to be a father.

4 THE COURT: Your conduct -- your conduct
5 is threatening.

6 You are menacing and you are --

7 MR. MCCARTHY: Show --

8 THE COURT: -- causing her fear.

9 MR. MCCARTHY: Going to a doctor --

10 THE COURT: I asked her if she was
11 afraid, and she said, Yes.

12 MR. MCCARTHY: I'm afraid.

13 THE COURT: And I believe her.

14 MR. MCCARTHY: Your Honor, I requested --
15 when this protection order was given, I requested
16 to her attorney that the transfers be done at the
17 police station.

18 I was denied that.

19 THE COURT: All right. Any other --

20 MR. MCCARTHY: And I --

21 THE COURT: Also -- I would also -- I'm
22 going to add that, you know, these restraining
23 orders now, there's something -- the law has
24 changed recently in which there's something
25 called coercive control.

1 mentioned, it's very protracted. They're --
2 protracted.

3 There have been multiple, multiple
4 filings by Mr. McCarthy in the probate court,
5 both during the pendency of the case and after
6 the case went to judgment, so much so that there
7 was a gatekeeper order that was entered by the
8 probate court --

9 THE COURT: Um-hum.

10 MS. CARBONE: -- to prevent these
11 excessive filings.

12 I do have a copy of that of the Court
13 wishes to see it.

14 THE COURT: Yeah, I'll take a look at.

15 So what was the result of the probate
16 court?

17 Who --

18 MS. CARBONE: So I do have a copy of the
19 judgment, but my client does have sole legal and
20 physical custody.

21 There is parenting time for Mr. McCarthy.

22 This is a copy of the gatekeeping order.

23 THE COURT: Okay. .

24 MS. CARBONE: I do have a copy of the
25 judgment as well, if your -- if the Court wishes

1 (indiscernible) because, like, wasn't doing --
2 helping him clean up the (indiscernible).

3 MR. MCCARTHY: Objection.

4 THE COURT: Overruled.

5 MS. LOMBARD: And --

6 THE COURT: This is -- I'm talking about
7 the -- she's telling me about abuse that occurred
8 in the past during your relationship.

9 That is relevant.

10 Go ahead.

11 MS. LOMBARD: And when I was -- we were
12 living together, and I was eight months pregnant,
13 we got in an argument over moving.

14 I moved a chair out of the bedroom. He
15 got upset with me, walking out (indiscernible).

16 I smacked him in the face, and then I
17 walked around the bedroom, and he kicked the door
18 down off the hinges.

19 Almost hit me as -- I was, like, at the
20 dresser right by the door. So I know it's there.

21 Like, I've seen, like, you coming and
22 scream at me in my face. And then you were going
23 to come back and scream at me in my face.

24 And he -- so it was just constant.

25 And now I get these (indiscernible)

APPEALS COURT
Full Court Panel Case
Case Docket

M.L. vs. B.M.
THIS CASE CONTAINS IMPOUNDED MATERIAL OR PID
2025-P-0721

CASE HEADER

Case Status	Closed: Rescript issued
Status Date	06/24/2026
Nature	Abuse prevention order
Entry Date	06/12/2025
Appellant	Defendant
Case Type	Civil
Brief Status	
Brief Due	
Arg/Submitted	01/15/2026
Decision Date	04/24/2026
Panel	Henry, Singh, Hand, JJ.
Citation	106 Mass. App. Ct. 1131
Lower Court	Framingham District, MI
TC Number	2549RO110065
Lower Ct Judge	David W. Cunis, J.
TC Entry Date	01/31/2025
SJ Number	
FAR Number	
SJC Number	

INVOLVED PARTY

M.L.
 Plaintiff/Appellee
 Red brief filed
 2 Enls, 44 Days

B.M.
 Pro Se Defendant/Appellant
 Blue br, app & reply br filed

ATTORNEY APPEARANCE

[Faint, illegible text]

DOCKET ENTRIES

Entry Date	Paper	Entry Text
06/17/2025		IMPOUNDED INFORMATION: Protected party's name and address are impounded pursuant to VAWA (18 U.S.C. § 2265(d)(3))--applicable to Court only, not to parties' filings.
06/12/2025	#1	Lower Court Assembly of the Record Package
06/12/2025		Notice of entry sent.
06/12/2025	#2	Civil Appeal Entry Form filed by B.M.
06/12/2025	#3	Affidavit of indigency (IMPOUNDED) filed for B.M.
06/12/2025	#4	Motion to Waive entry fee filed by B.M. The Motion to Waive entry fee is allowed conditionally, subject to review by the single justice. This appeal is now docketed for purposes of Mass. R. A. P. 19(a), which requires the appellant to serve and file the appeals brief and record appendix within the next forty days. Notice Sent.
06/13/2025		RE#4 ALLOWED FORTHWITH. The appellant's Affidavit of Indigency appears regular and complete on its face, and indicates that the appellant is indigent. The court hereby allows the Motion to Waive entry fee. Notice sent.
06/18/2025	#5	Docketing Statement filed by B.M.
07/14/2025	#6	(Replaced by Paper #7.2) Informal Appellant brief filed by B.M.
07/14/2025	#7	Informal Appendix filed by B.M.
07/21/2025	#7.1	Motion to file amended informal appellant brief filed by B.M..
07/21/2025	#7.2	Amended Informal Appellant brief filed by B.M..
07/22/2025	#8	RESPONSE to Paper #7.1, filed for M.L. by Attorney Victoria Carbone.
07/22/2025	#9	MOTION of Appellee to extend brief due date filed for M.L. by Attorney Victoria Carbone.
07/22/2025	#10	RESPONSE to Paper #8, filed by B.M.

07/23/2025 RE#7,1,8,9,&10: Appellant's motion to amend their informal brief is allowed and accepted for filing. Appellee's brief is now due on or before 09/23/2025. To the extent appellee raises an issue regarding attorney's fees incurred in this appeal, the issue may be raised in appellee's brief. *Notice.

09/24/2025 #11 Motion to Expedite Appeal filed by B.M.

09/24/2025 #12 Notice of Appellee's Failure to File Brief filed by B.M.

09/24/2025 Notice of rejection of brief/appendix of M.L. as noncompliant for the reasons indicated on the checklist: ***Brief- (#34)** Brief improperly designated impounded using the efilema.com security setting, **(#35)** Brief improperly designated as impounded or designated as impounded without providing a copy of a lower court order of impoundment or confidentiality. Accordingly, on or before 09/26/2025, you must correct the above-listed nonconformities and submit a conforming brief and/or appendix. *Notice sent.

09/24/2025 RE#11&12: These filings are treated as withdrawn at the request of the filer. *Notice.

09/24/2025 #13 Appellee brief filed for M.L. by Attorney Victoria Carbone.

10/01/2025 #14 Reply brief filed by B.M..

10/20/2025 #15 Letter pursuant to MRAP 16(l) filed by B.M..

10/20/2025 #16 Notice of supplemental record appendix filed by B.M..

10/22/2025 #17 Letter pursuant to MRAP 16(l) filed by B.M..

01/15/2026 Under consideration by Panel. (Henry, J., Singh, J., Hand, J.).

04/24/2026 #18 Decision: Rule 23.0 Order extending G. L. c. 209A order, entered February 14, 2025, affirmed.

Order denying motion for findings of fact and conclusions of law affirmed.

Order denying motion for reconsideration affirmed.

Order denying motion to reopen and admit additional evidence affirmed. (Henry, Singh, Hand, JJ.). *Notice.

05/05/2026 #19 Motion for Reconsideration or modification of decision filed by B.M..

05/06/2026 RE#19: After consideration, the motion filed pursuant to Rule 27 is denied. (Henry, Singh, Hand, JJ.) *Notice

05/14/2026 FAR-30912 opened on FAR APPLICATION filed by Brian McCarthy.

06/24/2026 FAR DENIED (on 06/24/2026).

06/24/2026 RESCRIPT to Trial Court.

As of 06/24/2026 4:15pm

**SUPREME JUDICIAL COURT
for the Commonwealth
Case Docket**

**M.L. vs. B.M.
THIS CASE CONTAINS IMPOUNDED MATERIAL OR PID
FAR-30912**

CASE HEADER

Case Status	FAR denied
Status Date	06/24/2026
Nature	Abuse petition c 209A
Entry Date	05/14/2026
Appeals Ct Number	
Response Date	05/28/2026
Appellant	Defendant
Applicant	
Citation	497 Mass. 1111
Case Type	Civil
Full Ct Number	
TC Number	2549RO110065
Lower Court	Framingham District, MI
Lower Ct Judge	David W. Cunis, J.

INVOLVED PARTY

M.L.
Plaintiff/Appellee

B.M.
Pro Se Defendant/Appellant

ATTORNEY APPEARANCE

NO APPEARANCE

DOCKET ENTRIES

Entry Date	Paper	Entry Text
05/14/2026		Docket opened.
05/14/2026	#1	FAR APPLICATION filed by B.M.
05/14/2026	#2	Motion to Waive Filing Fee (IMPOUNDED) filed by B.M.(5/21/2026: The affidavit of indigency appears regular and correct on its face and indicates the applicant is indigent. The Court hereby allows the filing fee to be waived)
05/28/2026	#3	RESPONSE to FAR application (IMPOUNDED) filed for M.L. by Attorney Victoria Carbone.
06/24/2026	#4	DENIAL of FAR application.

As of 06/30/2026 2:20pm

**AFFIDAVIT
FOR PROTECTION FROM
ABUSE
G.L. c. 209A**

in the law, you should describe at least three separate acts of coercively controlling behavior. The judge requires as much information as possible, such as what happened, each person's actions, the dates, locations, any injuries, and any medical or other help sought. Also describe any history of abuse, including the most serious incidents of abuse, with as much of the above detail as possible. **Please Note** Unless the court allows a Motion for Impoundment, this affidavit will be public record, including any names or specific addresses included in the affidavit. A Motion for Impoundment is a written request to the court asking to keep certain information out of public record. If you have questions about how to file a Motion for Impoundment, please ask the clerk's or register's office.

On or about January 31, 2025 and other diverse dates (date(s), examples: October 6, 2024, October 2024, or Fall 2024), the Defendant:

On March 12th 2024 I was awarded Sole Legal and Primary Physical Custody of our son Colton CM McCarthy. Since that time Father has shown continued episodes of harassment that have started to escalate to intimidate and scare me. Which is the reason I am seeking this order.

For example

1) Today January 31, 2025. Our son is sick with the flu and did not attend school. So Fathers pick up time is 11:30am at my house but he showed up at 9am, which is the pick up time when school is closed. My attorney and I have told him multiple times that pick up is 11:30am when it is a school day. But he continued to send 6 harassing messages on Our Family Wizard accusing my attorney and I of violating court orders and threatening me with contempt of court. We called the police to my house to ask Father to leave the premises and come back at the court ordered time of 11:30am. The police recommended I file a restraining order.

2) January 30th, 2025. I informed Father I was taking our son to the pediatrician due to high fever for 5 days. I told Father I would send him any information after the appointment and if he needed any treatment. He is also able to see what the doctor said on MyChart or call the office. He informed me that he will be in attendance. I let him know that he did not have my permission to come and would let him know what happens. He sent 5 Our Family Wizard messages including saying he will be there. I told him I would call the police if he came, per my attorney. He did show up, but we were already in an exam room. He was brought into a different exam room to speak with the doctor after the appointment. And we were able to leave the office without contact. But was in distress from the experience.

3) December 24th, 2024, As per court order Father was supposed to have Colton on Christmas Eve starting at 5pm until Christmas Day at 11am. As per the court order holiday time takes precedent over recurring parenting time. There for his scheduled parenting time from 3pm to 6pm is cancelled. Father showed up at mothers house at 3pm demanding to bring Colton out to his truck. Sending 8 Our Family Wizard messages. I reminded him that holiday time takes precedent over parenting time, but he said I was wrong. We both called the police and he ended up leaving and coming back at 5pm. He then filed contempt of court which is scheduled in April 2025. Father does have a gatekeeper order from Judge Allen due to his obsessive and repeated filings. The court found it necessary to limit his filings due to the abuse of the court.

4) November 18th, 2024, Colton was sick and I had to take him to the pediatrician. I let Brian know that Colton was sick, wasn't going to school and I was taking him to the doctors and would meet him back at my house at 11:30am. When leaving the doctors office, I noticed Fathers truck was behind me all of a sudden and he followed me into the stop and shop parking lot. He got out of his truck and was demanding in an angry and aggressive tone that I hand over Colton, that it was his parenting time. I told him that pick ups were at my house per the court order. He can meet me back at my house at 11:30 to get Colton. He then followed me into stop and shop to the pharmacy. The court order states that all pick ups are at preschool or at mothers home and he needs to stay in his truck. Seeing him behind me and following me made me very upset and nervous. I did go to the police station after that incident and filed a report. The officer on duty suggested I file a restraining order.

These are some examples of why I am requesting this court to grant a restraining order due to his pattern of harassing behaviors and threatening conduct, along with litigation abuse, overly litigious conduct by filing motions that get denied by the court. But he continues to find ways to file nonsense to harass me. I am afraid of him and the fact that he has several guns that he was ordered not to keep in his home, but I am not sure if he has really removed them. I am not sure what he is capable of.

Also has been sending multiple threatening emails to my lawyer and myself.

☐ If this box is checked, more space is needed, and _____ (number, how many) additional pages are attached

SIGNATURE

Select the most appropriate:

- ☒ I am the Plaintiff and I completed this Affidavit myself and I declare under penalty of perjury that all statements of fact made above and those included in the Complaint form, are true to the best of my knowledge.
- ☐ I am a Court Certified Interpreter and this is a translated version of the Plaintiff's Affidavit. Language: _____
- ☐ I am a law enforcement officer. I completed this Affidavit with information provided by the Plaintiff
- ☐ I am not the Plaintiff, but I transcribed this Affidavit on behalf of the Plaintiff. My relationship to the Plaintiff is: _____

DATE
01/31/2025

PRINTED NAME
Marcie E. Lombard

SIGNATURE

Marcie E. Lombard