

**IN THE SUPREME COURT OF MISSISSIPPI**

**NO. 2018-CA-00943-SCT**

***NADIA ALEXIS***

**v.**

***MARCUS BLACK***

DATE OF JUDGMENT: 05/30/2018  
TRIAL JUDGE: HON. ROBERT Q. WHITWELL  
TRIAL COURT ATTORNEYS: MELTORY DENISE FONDREN  
CHRISTI R. McCOY  
JOSHUA A. TURNER  
COURT FROM WHICH APPEALED: LAFAYETTE COUNTY CHANCERY  
COURT  
ATTORNEY FOR APPELLANT: CHRISTI R. McCOY  
ATTORNEY FOR APPELLEE: JOSHUA A. TURNER  
NATURE OF THE CASE: CIVIL - DOMESTIC RELATIONS  
DISPOSITION: AFFIRMED - 11/21/2019  
MOTION FOR REHEARING FILED:  
MANDATE ISSUED:

**EN BANC.**

**BEAM, JUSTICE, FOR THE COURT:**

¶1. Nadia Alexis appeals the chancellor's dismissal of her petition for domestic-abuse protection order and his assessment of the filing fee to her. Because sufficient evidence was not presented to support the issuance of a final domestic-abuse protection order, the trial court's judgment is affirmed.

**FACTS AND PROCEDURAL HISTORY**

¶2. Alexis and Marcus Black met in 2012 at Union College in Schenectady, New York. In August 2016, Alexis and Black moved to Oxford, Mississippi, in order for Alexis to pursue a master of fine arts degree at the University of Mississippi. They lived together in a one-bedroom apartment from August 2016 to January 2018.

¶3. In September 2017, Alexis and Black were discussing Alexis's family. Alexis felt that Black was being insensitive and told Black to "shove it." According to Alexis, Black then walked over to her and "punched her in the face" with a "closed fist." He then "grabbed [her] jaw and held on to it."

¶4. Black disputes that he punched Alexis but admits that he "slapped her lightly on the face" with an "[o]pen hand." Black explained as follows:

I asked her about her - it was Hurricane Irma or something - I asked her about her cousin or somebody in the family that was in the path of the hurricane, if they were all right. And like leading up to that, she had become increasingly like disgruntled, you know, always, you know, having something negative or smart to say about everything. So when I asked her about her cousin that lived in Florida that was in the path of the hurricane, she told me, oh, go shove it. I was like, okay, and then I got up and I approached her and I just slapped her lightly on the face.

When asked where he hit Alexis, Black indicated that it was on "her jaw, her cheek . . . ."

¶5. After the incident, Alexis asked Black to move out of the apartment but "wanted to give him time to leave" and "[find] somewhere to stay." Alexis set multiple deadlines for Black to move out of the apartment. But by January 1, 2018, Black had not moved out, and, according to Alexis, Black had not made any real attempts to move.

¶6. On January 5, 2018, Alexis filed a petition for an emergency domestic-abuse protection order in justice court, which was granted. After a hearing on January 11, 2018, a temporary domestic-abuse protection order was issued though April 11, 2018.

¶7. On April 2, 2018, Alexis filed a petition for a domestic-abuse protection order in chancery court and alleged that Black had “[a]ttempted to cause or intentionally, knowingly[,] or recklessly caused bodily injury” to her and had “placed, by physical menace or threat, [her] in fear of imminent serious bodily injury.” A hearing was held on May 30, 2018, at which Alexis and Black testified. Alexis explained that she was seeking a final domestic-abuse protection order against Black until December 2019, when she is to graduate.

¶8. After the hearing, the chancellor ruled from the bench, in part, as follows:

[Black’s] description of the incident was that they got into some type of argument and that he tapped [Alexis] on the cheek. [Alexis] said it was a closed fist. If he hit her with a closed fist, she’d had a bump on her chin or jaw or somewhere and probably would have gone to the doctor and called the police if there was anything to it. It sounds to me like it’s a tap that happened and it’s a one-time incident. In my view, one-time instances do[] not rise to the level of a domestic abuse situation that require[] a domestic abuse order.

In addition to that, yes, she finally brought an action in January of 2018, but from September to January, she lived in a one bedroom house . . . . And no action has been taking place for four months. And then four months later, she’s all fearful and brings these charges and comes in on this one-time incident and makes out a story that she’s scared to death of this guy. I just don’t believe it.

¶9. The chancellor found that the statutory requirements for the issuance of a domestic-abuse protection order had not been met. As a result, the chancellor dismissed the petition and ordered Alexis to pay the filing fee of \$182.50. Alexis timely appealed. On appeal,

Alexis argues that the chancellor erred by dismissing her petition for domestic-abuse protection order and by assessing costs against her.

### STANDARD OF REVIEW

¶10. “The standard of review employed by this Court for review of a chancellor’s decision is abuse of discretion.” *McNeil v. Hester*, 753 So. 2d 1057, 1063 (Miss. 2000) (citing *Church of God Pentecostal, Inc. v. Freewill Pentecostal Church of God, Inc.*, 716 So. 2d 200, 204 (Miss. 1998)). “This Court will not disturb the findings of a chancellor when supported by substantial evidence unless the chancellor abused his discretion, was manifestly wrong, clearly erroneous[,], or an erroneous legal standard was applied.” *Kilpatrick v. Kilpatrick*, 732 So. 2d 876, 880 (Miss. 1999) (internal quotation marks omitted) (quoting *Herring Gas Co. v. Whiddon*, 616 So. 2d 892, 894 (Miss. 1993)). However, questions of law are reviewed de novo. *McNeil*, 753 So. 2d at 1063 (citing *Consol. Pipe & Supply Co. v. Colter*, 735 So. 2d 958, 961 (Miss. 1999)).

### ANALYSIS

*I. Whether the chancellor erred by dismissing the petition for domestic-abuse protection order.*

¶11. Mississippi Code Section 93-21-15(2)(a) states,

After a hearing is held as provided in Section 93-21-11 for which notice and opportunity to be heard has been granted to the respondent, and upon a finding that the petitioner has proved the existence of abuse by a preponderance of the evidence, the chancery or county court shall be empowered to grant a final domestic abuse protection order or approve any consent agreement to bring about a cessation of abuse of the petitioner, any minor children, or any person alleged to be incompetent.

Miss. Code Ann. § 93-21-15(2)(a) (Rev. 2018).

¶12. We begin with whether Black “proved the existence of abuse by a preponderance of the evidence.” Mississippi Code Section 93-21-3(a) (Rev. 2018) defines “[a]buse” as “the occurrence of one or more of the following acts between . . . individuals who have a current or former dating relationship:”

- (i) Attempting to cause or intentionally, knowingly[, ] or recklessly causing bodily injury or serious bodily injury with or without a deadly weapon;
- (ii) Placing, by physical menace or threat, another in fear of imminent serious bodily injury;
- (iii) Criminal sexual conduct committed against a minor within the meaning of Section 97-5-23;
- (iv) Stalking within the meaning of Section 97-3-107;
- (v) Cyberstalking within the meaning of Section 97-45-15; or
- (vi) Sexual offenses within the meaning of Section 97-3-65 or 97-3-95.

Miss. Code Ann. § 93-21-3(a) (Rev. 2018).

¶13. The chancellor found, and the parties do not dispute, that at the time of the incident, Alexis and Black were in a “dating relationship.” Miss. Code Ann. § 93-21-3(d) (Rev. 2018) (“‘Dating relationship’ means a social relationship of a romantic or intimate nature between two (2) individuals; it does not include a casual relationship or ordinary fraternization between two (2) individuals in a business or social context.”).

¶14. In her petition, Alexis alleged that Black abused her by committing the following acts: (1) he “attempted to cause or intentionally, knowingly[, ] or recklessly caused [her] bodily injury,” and (2) he “placed, by physical menace or threat, [her] in fear of imminent serious bodily injury.” Miss Code Ann. § 93-21-3(a)(i), (ii).

¶15. Section 93-21-3 does not define the phrase “bodily injury.” As a result, we must look to other authority for guidance. Similar to the definition of “[a]buse” found in Section 93-21-3(a)(i), “simple assault” is defined as

(i) attempt[ing] to cause or purposely, knowingly[,] or recklessly caus[ing] bodily injury to another; (ii) negligently caus[ing] bodily injury to another with a deadly weapon or other means likely to produce death or serious bodily harm; or (iii) attempt[ing] by physical menace to put another in fear of imminent serious bodily harm . . . .

Mississippi Code Section 97-3-7(1)(a) (Rev. 2014). The definition of simple assault comes from the Model Penal Code. Model Penal Code § 211.1 (Am. Law Inst. 2018). The Model Penal Code defines “bodily injury” as “physical pain, illness[,] or any impairment of physical condition.” Model Penal Code § 210.0(2) (Am. Law Inst. 2018). Additionally, Black’s Law Dictionary defines “bodily injury” as “[p]hysical damage to a person’s body.” *Bodily injury*, Black’s Law Dictionary (7th ed. 2000). Moreover, this Court found that “a minor injury is a ‘bodily injury’ even though it may not be a traumatic injury.” *Reining v. State*, 606 So. 2d 1098, 1103 (Miss. 1992).

¶16. At the hearing, Alexis testified that she had suffered physical pain or physical damage as a result of Black’s actions. Specifically, Alexis testified that after the incident, her “jaw was burning” and “had [a] burning sensation after that.” Such burning or burning sensation sufficiently constitutes physical pain or physical damage to a person’s body. *See Jones v. State*, 164 So. 3d 1009, 1011 (Miss. Ct. App. 2013) (child victim experienced burning sensations in her genital area as a result of sexual battery), *cert. granted*, 132 So. 3d 579 (Miss. 2014), *cert. dismissed*, (Miss. Aug. 14, 2014); *see also Carter v. State*, 956 So. 2d

951, 954 (Miss. Ct. App. 2006) (child victim complained of burning sensation when she urinated as a result of sexual battery). We find that the burning or burning sensation in Alexis’s jaw was a minor injury. As a result, the record shows by a preponderance of the evidence that the physical altercation caused bodily injury to Alexis. Therefore, this Court finds that sufficient evidence was presented to show that Black abused Alexis by “[a]ttempting to cause or intentionally, knowingly[,] or recklessly causing bodily injury or serious bodily injury.” Miss. Code Ann. § 93-21-3(a)(i).

¶17. In dismissing the petition for domestic-abuse protection order, the chancellor stated that, “[i]n [his] view, [a] one-time instance[] does not rise to the level of a domestic abuse situation . . . .” This Court finds that the chancellor’s statement was erroneous because Section 93-21-3(a) states, “the occurrence of *one* or more of the [listed] acts” constitutes abuse. Miss. Code Ann. § 93-21-3(a) (emphasis added). But our inquiry is whether the chancellor abused his discretion in view of the evidence *not* to “grant a final domestic abuse protection order or approve any consent agreement to bring about a cessation of abuse of the petitioner.”

¶18. Alexis asserts that she sought the final protection order because she “fear[ed] that [Black] w[ould] hurt her again.” She said she “fe[lt] like the reason why [Black] didn’t take certain actions [wa]s because [the temporary] protection order was in place.” However, Black presented evidence that the parties had interacted cordially, including living together for months after the abuse without incident. After the emergency protection order was entered in January 2018, Black moved out of Alexis’s apartment. He contacted her once via

text message to ask when he could pick up the rest of his personal belongings. While Alexis testified that this “intimidated” her, she acknowledged that Black “got the law enforcement to come and be there when he wanted to get his stuff.” She further acknowledged that although she would see Black around town, Black never attempted to speak to her. In fact, the record shows that there have been no actions taken by Black against Alexis since the September 2017 incident. Alexis admitted during the hearing that Black has not done or said anything to her since he moved out in January 2018.

¶19. Sufficient evidence was adduced for the chancellor to find that the domestic-abuse temporary protection order was warranted. Likewise, sufficient evidence was before the chancellor supporting his finding that the a final domestic-abuse protection order was not warranted. The chancellor is tasked with the duty of evaluating the evidence and the credibility of the witnesses. While he was incorrect about one incident’s not being sufficient to establish abuse, the chancellor went on to evaluate the evidence on the record, laid out why the evidence did not support a claim of ongoing fear and stated, “I just don’t believe it.” The credibility of the witnesses and evaluation of the evidence is for the trial judge, as the finder of fact, to decide. He decided, and we agree. Because sufficient evidence for the issuance of a final domestic-abuse protection order was not established, we affirm the trial court’s decision.

*II. Whether the chancellor erred by assessing costs against Alexis.*

¶20. Alexis last argues that the chancellor erred by assessing the filing fee against her. Under Mississippi Code Section 93-21-7(3),



If the court finds that the petitioner is entitled to an order protecting the petitioner from abuse, the court shall be authorized to assess all costs including attorney's fees of the proceedings to the respondent. The court may assess costs including attorney's fees to the petitioner only if the allegations of abuse are determined to be without merit and the court finds that the petitioner is not a victim of abuse as defined by Section 93-21-3.

Miss. Code Ann. § 93-21-7(3) (Rev. 2018).

¶21. Here, the chancellor found that the statutory requirements of Section 93-21-3 were not met. Accordingly, the chancellor did not abuse his discretion by assessing costs against Alexis under Section 93-21-7(3).

¶22. **AFFIRMED.**

**RANDOLPH, C.J., COLEMAN, MAXWELL, CHAMBERLIN AND ISHEE, JJ., CONCUR. GRIFFIS, J., DISSENTS WITH SEPARATE WRITTEN OPINION JOINED BY KITCHENS AND KING, P.JJ.**

**GRIFFIS, JUSTICE, DISSENTING:**

¶23. Because I find the chancellor erred by dismissing the petition for domestic-abuse protection order, I respectfully dissent.

¶24. Under Mississippi Code Section 93-21-15(2)(a) (Rev. 2018), “the chancery or county court shall be empowered to grant a final domestic abuse protection order . . . to bring about a cessation of abuse of the petitioner . . . .” Here, the record reflects that Alexis was afraid of Black and feared that Black would hurt her again. Alexis testified that a few days before the incident, Black discussed with her when, in his opinion, it was okay for a man to hit a woman. Alexis explained,

And so - and this was a couple of days before he actually hit me. And he said, you know, sometimes, you know, a woman want to talk crazy to a man and they can't fight that man. So if you can't fight, then you can't talk crazy to

him. You've got to be prepared to fight. And so a couple of days later, th[e] incident happened. And so when I reflected on it in hindsight, I couldn't help but think about them being connected in a particular way. And so, yes, I was afraid of him. I am afraid of him. And he has basically communicated - that wasn't the first time he communicated his beliefs on whether it's okay to hit women. And, yes, I have reason to be afraid because of the actions and things that he has said and things like that.

¶25. The record further reflects that despite multiple requests, Black refused to move out of Alexis's apartment after the incident. Black acknowledged that the only reason he finally moved out of Alexis's apartment was because a protection order was issued and he was forced to leave. Alexis acknowledged that Black complied with the temporary protection order but explained as follows:

Because the protection order was in place and [Black] doesn't want to get arrested. I'm assuming that he doesn't want to get arrested, so he respected that order . . . [a]nd, you know, he respected that order, but he didn't . . . respect me when he hit me and he also . . . didn't respect my wishes when I asked him to move . . . .

¶26. The record shows that a protection order was required to remove Black from Alexis's apartment after he hit her. Thus, Alexis's belief, that the only reason Black left her alone was because the temporary protection order had been issued, was reasonable.

¶27. Because Alexis sufficiently showed that Black abused her and that a final domestic-abuse protection order is necessary to prevent further abuse, the chancellor erred by dismissing the petition. I would reverse and remand with instructions to enter a final domestic-abuse protection order against Black until December 2019, when Alexis graduates.

**KITCHENS AND KING, P.JJ., JOIN THIS OPINION.**