

Fifth Circuit Court of Appeal
State of Louisiana

No. 26-CA-154

LENNIE DAZET

VERSUS

JOSHUA NICOLINI

ON APPEAL THE TWENTY-FOURTH JUDICIAL DISTRICT COURT
PARISH OF JEFFERSON, STATE OF LOUISIANA
NO. 812-896, DIVISION "B"
HONORABLE R. CHRISTOPHER COX, III, JUDGE PRESIDING

July 21, 2026

TIMOTHY S. MARCEL
JUDGE

Panel composed of Judges Fredericka Homberg Wicker,
John J. Molaison, Jr., and Timothy S. Marcel

AFFIRMED

TSM
FHW
JJM



COUNSEL FOR PLAINTIFF/APPELLANT,
LENNIE DAZET

John Y. Kennedy

MARCEL, J.

In this case arising from parents disputing custody of a minor child, plaintiff Lennie Dazat, mother of minor child D.N., appeals a January 5, 2026 judgment of the trial court denying her motion for a new trial following a judgment awarding plaintiff joint custody of the child with the father, Joshua Nicolini, naming Ms. Dazat domiciliary parent, and allowing Mr. Nicolini supervised visitation on alternating weekends provided Mr. Nicolini complies with certain stipulations. On appeal, Ms. Dazat argues that the trial court manifestly and legally erred, and seeks a new judgment rendered in her favor awarding sole custody of the child and more limited, if any, supervised visitation. For the following reasons, we affirm the judgment of the trial court.

BACKGROUND

The custody dispute between Ms. Dazet and Mr. Nicolini arises from cross petitions to establish custody filed by each parent on or after September 20, 2021 in the 24th Judicial District Court for the Parish of Jefferson.¹ The Domestic Commissioner held hearings on the petitions on March 11, 2024. On March 20, 2024 and April 1, 2024, the commissioner issued orders awarding the parties joint legal custody of the minor child and naming Ms. Dazet the domiciliary parent, while also allowing Mr. Nicolini visitation with the child on alternating weekends, to be supervised by either his grandmother or aunt. The visitation was to remain supervised until Mr. Nicolini provided proof to the court of completion of court ordered domestic violence classes. The

¹ Prior to the filings of these petitions, Ms. Dazet had filed and was granted an Order of Protection against Mr. Nicolini arising from a December 4, 2020 domestic dispute in which she alleged that Mr. Nicolini kicked and slapped her.

orders provided additional requirements concerning communications and conduct of the parents. Ms. Dazet filed objections to the rulings of the Domestic Commissioner; Mr. Nicolini filed a motion for modification of custody and visitation and for contempt in which he alleged that Ms. Dazet had refused to allow him visitation.

On August 22, 2024, Ms. Dazet filed a petition for protection from abuse on behalf of the minor child against Mr. Nicolini: this petition was dismissed by the Domestic Commissioner on February 4, 2025 for failure to prove by the appropriate standards the allegations set forth in the petition. Ms. Dazet also objected to this order of the Domestic Commissioner.

Multiple hearings addressing Ms. Dazet's objections to the Domestic Commissioner's orders were set with the trial court. Mr. Nicolini was granted continuances in order to secure counsel and to be given an opportunity to review the court ordered custody evaluation. In an interim judgment dated July 10, 2025, the trial court also required that Mr. Nicolini complete five hours of parenting classes as well as three months of negative random drug tests prior to contact with the child.

On August 27, 2025, the trial court heard all of the objections filed by Ms. Dazet to the Domestic Commissioner's orders. Following the hearing, the trial court issued a written judgment in which, based on the evidence adduced and the testimony given, it dismissed the objections to the Domestic Commissioner's orders. Ms. Dazet filed a motion for new trial. In a January 5, 2026 judgment, the trial court denied the motion for a new trial, but did amend its previous judgment

to include additional decretal language specifying that the court dismissed the objections filed by Ms. Dazet and instead adopted the rulings of the Domestic Commissioner as the judgment of the court, including the award of joint custody, naming Ms. Dazet as the domiciliary parent, and supervised visitation to Mr. Nicolini provided he met the previously established requirements. Ms. Dazet's timely appeal followed.

On appeal, Ms. Dazet raises four assignments of error:

1. The trial court erred as a matter of law in not conducting a trial *de novo*;
2. The trial court manifestly erred in rejecting the uncontroverted evidence presented at the August 27, 2025 trial;
3. The trial court manifestly erred in failing to make a determination that Mr. Nicolini had perpetrated multiple acts of domestic violence on a family member;
4. The trial court erred as a matter of law in not applying the appropriate standard of proof with regards to the custody decree portion of the January 5, 2026 judgment.

We consider these assignments of error in our discussion below.

DISCUSSION

Under La. C.C.P. art. 1972, a new trial shall be granted when the judgment appears clearly contrary to the law and the evidence. The appellate standard of review on a motion for a new trial is whether the trial court abused its discretion. *Marciante v. Marciante*, 12-569, p. 6 (La. App. 5 Cir. 3/27/13), 113 So.3d 387, 390. The trial court's determination shall not be disturbed absent an abuse of that discretion.

131 Beverly Knoll, LLC v. Clipper Constr., LLC, 18-486, p. 8 (La. App. 5 Cir. 5/15/19), 273 So.3d 1243, 1250.

Concerning appellant's first assignment of error, we observe first that the position taken by appellant that the trial court failed to conduct a trial *de novo* on August 27, 2025 on Ms. Dazet's objections is contrary to the statements she made in her Motion for New Trial filed on October 7, 2025 in which she stated "[a] Trial de Novo was held on August 27, 2025 on the following objections to Domestic Commissioner's Orders..." Additionally, it appears from the trial transcript that the court did allow Ms. Dazet to present additional testimony and evidence. An appellate court will not consider issues that were not raised with or addressed by the trial court. *Richard v. Martin*, 22-214, p. 3 (La. App. 5 Cir. 2/1/23), 358 So.3d 890, 892; *see also* Uniform Rules-Courts of Appeal, Rule 1-3, ("The Courts of Appeal will review only issues which were submitted to the trial court..."). Because Ms. Dazet failed to raise this issue in with the trial court in her motion for a new trial, we decline to consider the merits of this assignment of error.

We next observe that Ms. Dazet's fourth assignment of error, that the trial court legally erred by failing to apply the rules set forth in Louisiana Revised Statute 9:364 concerning an award of custody to a parent who has a history of perpetrating family violence, is contingent upon the trial court's factual finding that Mr. Nicholini had a history of perpetuating family violence as defined in La. R.S. 9:362. In light of this and the arguments made in appellant's second and third assignments of error, we review the evidence presented to determine

whether the trial court manifestly erred in finding that Mr. Nicolini had no history of perpetrating family violence.

Under La. R.S. 9:634, “[t]he court may find a history of perpetrating family violence if the court finds that one incident of family violence has resulted in serious bodily injury or the court finds more than one incident of family violence.” Family violence is defined in La. R.S. 9:362 as including but not limited to “physical or sexual abuse and any offense against the person as defined in the Criminal Code in Louisiana, except negligent injuring and defamation, committed by one parent against the other parent or against any of the children.”

We review the trial court’s factual findings in a child custody determination for manifest error. *Marshall v. Thurman*, 25-309, p. 8 (La. App. 5 Cir. 9/24/25), 423 So.3d 211, 222, *writ denied*, 2025-01266 (La. 11/12/25), 420 So.3d 710. The issue to be resolved by the reviewing court is not whether the trier of fact is right or wrong, but whether the fact finder’s conclusion is a reasonable one. *Id.* An appellate court may not reverse reasonable findings merely because it would have weighed the evidence differently. *Id.* When factual findings are based on determinations regarding the credibility of witnesses, the manifest error-clearly wrong standard of review demands great deference to the trier of fact, because only the trier of fact can be aware of the variations in demeanor and tone of voice that bear so heavily on the listener’s understanding and belief in what is said. *Dufresne v. Dufresne*, 08-215, p. 7 (La. App. 5 Cir. 9/16/08), 992 So.2d 579, 585, (citing *Rosell v. ESCO*, 549 So.2d 840 (La.1989)). Where there are two permissible views of the

evidence, the fact finder's choice between them cannot be manifestly erroneous or clearly wrong. *Id.*

Evidence presented at the August 27, 2025 hearing included: the August 22, 2024 petition for protection from abuse; medical records from Children's Hospital of New Orleans and the Audrey Hepburn Care Center pertaining to an examination of the minor child; twelve photographs of the minor child; the live testimony and an updated custody evaluation report of Terri L. Campesta; additional medical records containing clinical observations and diagnosis of the child. Ms. Dazet also took to the stand and testified as to the circumstances surrounding the alleged abuse of the minor child that led to her filing of the August 22, 2024 protective order. Mr. Nicholini, who represented himself during the proceeding, did not testify, but did offer into evidence the Domestic Commissioner's order dismissing the August 22, 2024 petition for protection.

Ms. Dazet argues that the trial court erred in failing to find that Mr. Nicholini had perpetrated abuse against the minor son because the evidence introduced at trial was "uncontroverted." However, the evidence introduced by Ms. Dazet into the record does not support her claims. The doctor's notes provided indicate that the child's statements about his father were "concerning" but also "unclear". The notes also appear to indicate that the minor child was taken for medical care relating to injuries the minor child sustained while playing with his step-father, and that the child also made statements about being struck by his mother and step-father. The doctor's notes indicate that the incident was reported to the Department of Child and Family Services

for investigation. Mr. Nicholini offered to introduce this report at the hearing, but was denied per the objection of Ms. Dazet's attorney. Ms. Dazet did not introduce any records from DCFS at the hearing. As for Ms. Dazet's own testimony, the trial court was in the best position to determine her credibility.

Upon examination of the evidence presented, at this time we find no manifest error in the trial court's factual determination that Mr. Nicholini did not perpetrate abuse on the child. The court's conclusion was reasonably drawn from the evidence presented. In so finding, we also find that the trial court did not legally err by declining apply La. R.S. 9:364. Having found that the trial court's judgment was supported by the law and the evidence, we also find no abuse of the trial court's discretion in denying the motion for a new trial. Accordingly, the judgment of the trial court is affirmed.

AFFIRMED

SUSAN M. CHEHARDY
CHIEF JUDGE

FREDERICKA H. WICKER
JUDE G. GRAVOIS
MARC E. JOHNSON
STEPHEN J. WINDHORST
JOHN J. MOLAISSON, JR.
SCOTT U. SCHLEGEL
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NOTICE OF JUDGMENT AND CERTIFICATE OF DELIVERY

I CERTIFY THAT A COPY OF THE OPINION IN THE BELOW-NUMBERED MATTER HAS BEEN DELIVERED IN ACCORDANCE WITH **UNIFORM RULES - COURT OF APPEAL, RULE 2-16.4 AND 2-16.5** THIS DAY **JULY 21, 2026** TO THE TRIAL JUDGE, CLERK OF COURT, COUNSEL OF RECORD AND ALL PARTIES NOT REPRESENTED BY COUNSEL, AS LISTED BELOW:

A handwritten signature in blue ink that reads "Curtis B. Pursell".

CURTIS B. PURSELL
CLERK OF COURT

26-CA-154

E-NOTIFIED

24TH JUDICIAL DISTRICT COURT (CLERK)
R. CHRISTOPHER COX, III (DISTRICT JUDGE)
JOHN Y. KENNEDY (APPELLANT)

MAILED

JOSHUA NICOLINI (APPELLEE)
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