Circuit Court for Baltimore County
Case No. C-03-FM-22-807409

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 124

September Term, 2022

ERIC STEPHENS

v.

KIRSTEN STEPHENS

Arthur,
Tang,
Sharer, J. Frederick
(Senior Judge, Specially Assigned),

JJ.

Opinion by Tang, J.

Filed: September 15, 2022

Appellant, Eric Stephens ("Father"), and appellee, Kirsten Stephens ("Mother"), have two minor children in common, Q.S. and S.S. (collectively, "the children"). On February 11, 2022, Mother filed a Petition for Protection from Child Abuse ("Petition") in the Circuit Court for Baltimore County against Father on the children's behalf.[1] At the conclusion of a final protective order hearing, the court found that Father had committed acts of child abuse, and it entered a final protective order against Father. That order, effective until March 13, 2023, awarded Mother sole custody of the children and prohibited Father from, *inter alia*, harassing, contacting, or attempting to contact Q.S. or Mother. On appeal, Father contends that the court erred in granting that final protective order. For the following reasons, we shall affirm the court's order.

FACTUAL AND PROCEDURAL BACKGROUND

In May 2021, the Circuit Court for Baltimore County entered a Judgment of Absolute Divorce, which dissolved the parties' marriage, distributed their marital property, and deferred adjudication of "legal custody, physical custody, visitation, and child support, as they pertain to the parties' minor children[.]" In August 2021, the court held a custody hearing, during which the parties placed their agreement regarding child custody, support, and access on the record. The agreement was embodied in a "consent order," which the court entered on August 20, 2021, and provided for, *inter alia*, shared physical custody of Q.S. pursuant to a 5-5-2-2 schedule, the use of a parent coordinator to resolve

[1] Q.S. and S.S. were then seven years old and fourteen years old, respectively.

disagreements concerning the children, and financial support for the children. The Judgment of Absolute Divorce and the consent order were entered by the court in Case No. C-03-FM-19-004524 (hereinafter, the "divorce/custody case").[2] Later, in the divorce/custody case, Mother filed a petition for contempt against Father, alleging that he had violated the consent order. She also filed a motion to modify custody, requesting that she be granted sole legal and physical custody of the children. The court scheduled a hearing on those matters for March 11, 2022.

While those matters were pending, Mother filed the Petition in a separate case, Case No. C-03-FM-22-807409 (hereinafter, the "protective order case"), wherein she alleged that, on or about February 7, 2022, Father had grabbed Q.S. by his shirt collar, slammed his head into the car, pulled him, shoved him, scratched his arm, and bruised his elbows. She also alleged that Father had withheld Q.S. from both school and her custody for four weeks. On February 11, 2022, the circuit court entered a temporary protective order against Father, prohibiting him from contacting Mother or Q.S. pending a final protective order hearing, which it scheduled for the same day as the hearing on the pending matters in the divorce/custody case.

On March 11, 2022, the court heard testimony and arguments pertaining to (1) Mother's contempt and custody modification requests in the divorce/custody case, and (2)

[2] We incorporate portions of the procedural history from the divorce/custody case to provide context for the instant appeal.

Mother's Petition in the protective order case. The testimony established the following facts.[3]

Mother testified that after January 12, 2022, Father withheld Q.S. from her for a period of 28 days. During that four-week period, Q.S. was consistently truant from the school in which he was enrolled. Mother sought the assistance of child protective services, the police, and the parent coordinator, but to no avail. On the morning of February 8, 2022, Q.S. called Mother from a hotel where he and Father had been staying. Q.S. indicated that Father was "fast asleep." After consultation with counsel, Mother picked up Q.S. from the hotel. Q.S. ran to her and pled, "[G]o, go, go, go, please." Mother described Q.S. as having "seemed rattled and upset, scared, [and] very nervous." Mother testified that it was her understanding "that there had been an altercation in [Father's] car, which had caused [Q.S.] to bump around and get tossed around in the car." Mother also admitted photographs "of injuries that [Q.S.] had suffered when he was with [Father]."

The best interest attorney ("BIA"), appointed to represent the children in the divorce/custody case, testified that she had interviewed Q.S. shortly after he was reunited with Mother. According to Q.S., during those four weeks, Father and Q.S. traveled from hotel to hotel. The BIA relayed in detail Q.S.'s account of Father's behavior toward him during that time:

[3] We limit our recitation of the evidence adduced at the March 11, 2022 hearing to those that are relevant to the court's finding of abuse of a child, resulting in the entry of the final protective order.

[Q.S.] verified . . . that . . . he was not returned to his mother for an extended period of time, that he was not attending school, that . . . he was told by his father that he was keeping him because his mother was going to jail. He was not going to go see his mother again.

* * *

[Q.S.] informed me that they were going from hotel to hotel because of some kind of smell at the home. He informed me that he would be left in the hotel room at night. He would be put to bed. Go to bed, wake up in the middle of the night and his dad would not be there. There were periods of time when he was left alone in the vehicle while his father went into a restaurant and had dinner in the restaurant.

[Q.S.] informed me that . . . his dad became physical[.] [T]he day that I saw him following . . . [Mother's] getting him from the hotel, [Q.S.] did have a T-shirt on and either a ski jacket or a vest. And he told me how that he was in the car with his father. His father said to him, why do you always lie to me and grabbed him while he was driving, grabbed him by the T-shirt and the neck and tried to like drag him across. Like I [could] see the T-shirt was stretched out. He was covered up. So I didn't see any bruises. But I certainly could verify that his T-shirt was stretched out. This ultimately was the reason for the Protective Order.

But [Q.S.] has also informed me of other physical aggression by [Father]. During this time when he was not attending school, he was told that he had to think of math problems on his own. He had to read. And if he had trouble reading, as [Q.S.] said, chapter books, according to [Q.S.], that [Father] would throw the chapter book at his head.[4] [I]f he didn't speak fast enough or respond fast enough, he would be kicked or hit by [Father]. If he had trouble spelling or reading, he would be put in the corner of the . . . hotel room and told to look down. And he would have to sit there for an extended period of time.

During the time of moving from hotel to hotel, he said that oftentimes [Father] was up very late into the evening. [Q.S.] would wake up. [Father] would be continuing to sleep and would be sleeping for an extended period of time in the morning. And that is exactly what happened the morning --

[4] Q.S. has attention-deficit/hyperactivity disorder (ADHD) and dyslexia.

> that's how he was able to leave the hotel that morning because [Father] was, in fact, asleep for an extended period of time.

Father admitted that in January he withheld Q.S. from both school and Mother's custody. He explained that the wells at his home smelled, so "[w]e took a stayca[]tion. We have means. So we went to all of the hotels in Owning Mills while my water smelled[.] This particular time, as we were hotel hopping, Marriott, Hyatt, and restaurant hopping, wherever we wanted to go for two weeks[.]" With respect to the alleged child abuse, Father testified, "There's no possible way I injured my kid. They are lies."

At the conclusion of the hearing, the court found that Mother had met her burden of proving by a preponderance of the evidence that, on February 7, 2022, Father "committed one or more of the following acts of abuse, that being statutory abuse of a child, physical or mental." Accordingly, the court issued a final protective order, which memorialized its finding as follows:

> There is a preponderance of the evidence to believe that [Father] committed the following act(s) of abuse:
>
> Statutory abuse of a child (physical, mental)
> On 02/07/2022
> Description of harm
> PRIOR HISTORY OF DOMESTIC ABUSE. SHOVING, SCRATCHING BY [FATHER] WHICH CAUSED SCRATCHES AND BRUISING

The final protective order, effective until March 13, 2023, awarded Mother custody of the children. It also prohibited Father from, *inter alia*, (1) abusing or threatening to abuse Mother or the children; and (2) contacting, attempting to contact, or harassing

Mother or Q.S. Finally**,** the order required Father (1) to successfully complete anger management, and (2) to participate in ongoing mental health services.[5]

STANDARD OF REVIEW

A final protective order petitioner must show "by a preponderance of the evidence that the alleged abuse has occurred[.]" Md. Code Ann., Fam. Law § 4-506(c)(1)(ii) (1984, Repl. Vol. 2019). When a petitioner seeks relief for a child, "abuse" is defined as "the

[5] With respect to the contempt petition that Mother had filed in the divorce/custody case, the court found Father in contempt for violating the consent order. During the March 11, 2022 hearing, Father claimed that the consent order was not binding on him because he did not sign it, notwithstanding his agreement, on the record at the August 2021 custody hearing, to be bound its terms. He also asserted that the parties' estate planning documents includes a power of attorney that gave him, *inter alia*, the unconditional authority to withhold the children from Mother at his discretion. Father further admitted that he had violated the support obligations he assumed in the parties' consent order, explaining, in part, "[w]e have experienced some issues, fraudulent issues [with respect to a bank account], which is how New York comes into play. I would also like to submit our Stephens Estate Plans, which speaks to all of these concerns." Father believed this information was relevant because "the company as well as [Mother] [had been] in breach of their fiduciary dut[ies]."

As to Mother's request to modify custody (also filed in the divorce/custody case), the court granted Mother's request and awarded her sole physical custody of the children. At the conclusion of the hearing, the court expressed concern about Father's "ongoing failure to follow" the consent order and "the January situation, which was of such gravity that it caused both the [best interest attorney] and the parent coordinator to become involved[.] I have very ser[i]ous concerns about the behavior of [Father] during the course of that[.] [T]he fact that . . . this child is being removed from school and then moved from place to place to place to place is extremely concerning[.] [E]verything about this situation and including [Father's] demeanor and presentation here today is concerning."

physical or mental injury of a child under circumstances that indicate that the child's health or welfare is harmed or at substantial risk of being harmed[.]" Fam. Law § 5-701(b)(1)(i).

When reviewing the issuance of a final protective order, we accept the court's findings of fact unless they are clearly erroneous. *See* Md. Rule 8-131(c); *Barton v. Hirshberg*, 137 Md. App. 1, 21 (2001). We "must consider evidence produced at the trial in a light most favorable to the prevailing party and if substantial evidence was presented to support the trial court's determination, it is not clearly erroneous and cannot be disturbed." *Ryan v. Thurston*, 276 Md. 390, 392 (1975). We defer to the trial court's credibility determinations because it has "the opportunity to gauge and observe the witnesses' behavior and testimony during the trial." *Barton*, 137 Md. App. at 21 (quoting *Ricker v. Ricker*, 114 Md. App. 583, 592 (1997)). "As to the ultimate conclusion, however, we must make our own independent appraisal by reviewing the law and applying it to the facts of the case." *Piper v. Layman*, 125 Md. App. 745, 754 (1999) (citation omitted).

DISCUSSION

Father asks us to vacate the final protective order, arguing that it was improvidently granted. Mother responds that Father presents no arguments to support that contention. We agree with Mother.

Father, *pro se*, filed an informal brief pursuant to Maryland Rule 8-502(a)(9). Although this Rule dispenses with the technical requirements of a formal brief under Rule 8-504, the informal brief still "must identify issues that explain why the trial court erred or

made a mistake in deciding the case and why the decision should be reversed or modified." Guidelines for Informal Briefs (b)(2); *see* Court of Special Appeals Administrative Order (Mar. 9, 2021) ("Informal briefs shall comply substantially with the Guidelines for Informal Briefs[.]").[6] Father's informal brief does not articulate any arguments explaining why the court erred in granting the final protective order. He merely lists reasons he believes the court granted the final protective order, most of which do not correlate with the court's finding of child abuse under the protective order statute:

> [The court] [i]mplemented a protective order . . . based on the following . . . reasons:
>
> 1. The Defendant's belief in the current viability/enforceability of the "Stephens Trust Estate" plan documents, presented to and accepted by the court as evidence by the Defendant.
>
> * * *
>
> 2. The question of Law, "Does a Durable Power of Attorney last subsequent to divorce?" In the lawful exercise of the Defendant's Durable Power of Attorney . . . executed by the Plaintiff 11/17/13. Acting as both Parent/Guardian and Attorney in Fact, based on documented facts, the Defendant acted in DEFENSE of Q . . . yada yada
>
> 3. The application of the Preponderance of Evidence standard, to the evidence presented by the Plaintiff (comprised of, which speaks to the Defendant's, Responsibility (or lack there[]of) for and Guilt of Civil (not Criminal) Child Abuse and Neglect, upon the Defendant's two minor children[.]
>
> 4. Failure to adhere to 8/20/2[1] Judge King [finding] of an unsigned (by both the Defendant and Defendant's unethical attorney . . .) contract.

[6] The Guidelines for Informal Briefs and the Administrative Order can be found on the Court of Special Appeals's website.

As this Court has consistently held, "[w]e cannot be expected to delve through the record to unearth factual support favorable to [an] appellant," *Van Meter v. State*, 30 Md. App. 406, 408 (1976), nor is it our "responsibility to attempt to fashion coherent legal theories to support [an] appellant's sweeping claims." *Electronics Store v. Cellco P'ship*, 127 Md. App. 385, 405, *cert. denied*, 356 Md. 495 (1999). "[W]here a party initially raised an issue but then failed to provide supporting argument, this Court has declined to consider the merits of the question[.]" *Fed. Land Bank of Baltimore, Inc. v. Esham*, 43 Md. App. 446, 457-58 (1979).

We recognize that Father is a *pro se* litigant. That status does not, however, excuse his noncompliance with the substantive requirements for an informal brief. *See Dep't of Labor v. Woodie*, 128 Md. App. 398, 411 (1999) ("It is a well-established principle of Maryland law that *pro se* parties must adhere to procedural rules in the same manner as those represented by counsel."); *Tretick v. Layman*, 95 Md. App. 62, 68 (1993) ("The principle of applying the rules equally to *pro se* litigants is so accepted that it is almost self-evident."). Because Father failed to present any argument explaining why the court's granting the final protective order was in error, we will not address that issue.[7] *See Health*

[7] Father appears to raise a second issue in his informal brief, which he titles "Fraud." He alleges that Mother committed fraud "upon the court, [Father,] and the Stephens Estate" and "intentionally" failed to include a bank account in the parties' joint property statement in the divorce/custody case. According to Father, Mother's "fraud" was/is the subject of litigation in New York. Father's civil appeal information report suggests that the fraud issue relates to the court's contempt findings. In the report, Father claims that the court "errored [sic] in judgement of [c]ontempt based on" a consent order he did not sign and "[Mother's] documented pattern of contempt and perjurious behavior – JD CITATION

Servs. Cost Review Comm'n v. Lutheran Hosp. of Md., Inc., 298 Md. 651, 664 (1984) ("This Court has consistently held that a question not . . . argued in an appellant's brief is waived or abandoned and is, therefore, not properly preserved for review.").

Even if Father adequately argued that Mother did not meet her burden of proof by a preponderance of the evidence, we perceive no error by the court. The testimony and evidence admitted at the hearing demonstrated that, on or about February 7, 2022, Father grabbed Q.S. by the shirt and neck. The BIA corroborated Q.S.'s account with her testimony that she observed Q.S.'s "stretched out" shirt. The evidence also demonstrated that Father subjected Q.S. to other episodes of "physical aggression" which Mother corroborated with photographs of injuries Q.S. "had suffered when he was with [Father.]"

Surrogates COURT of NY., MANHATTAN; now referred to ATTY. GEN OF NY., LAW DEPT. result of [Father's] objection – EstatePl. (1/10/2022). Rule 2-907 (4/11/21 Subpoena)."

To the extent that he seeks to appeal from the court's finding of contempt, Father did not file a notice of appeal in the divorce/custody case. *See* Md. R. 8-201(a) (subject to an exception not applicable here, "the only method of securing review by the Court of Special Appeals is by the filing of a notice of appeal within the time prescribed in [the Rules]. The notice shall be filed with the clerk of the lower court[.]"). Even if the filing of the notice of appeal in the protective order case is liberally construed to apply to the divorce/custody case, we decline to address the fraud issue. Father makes conclusory accusations and does not explain why the court erred in finding Father in contempt. *See e.g., HNS Dev., LLC v. People's Counsel for Baltimore Cnty.*, 425 Md. 436, 459 (2012) ("The brief provides only sweeping accusations and conclusory statements [and] we are disinclined to search for and supply HNS with authority to support its bald and undeveloped allegation[.]").

Father invites us to consider other evidence and to draw different inferences from admitted evidence.[8] It is not, however, our role to reweigh the evidence or to make our own credibility determinations when reviewing the findings after a bench trial. *See Bricker v. Warch*, 152 Md. App. 119, 138 (2003). The court was entitled "to accept—or reject—*all*, *part*, or *none* of the testimony of any witness, whether that testimony was or was not contradicted or corroborated by any other evidence." *Omayaka v. Omayaka*, 417 Md. 643,

[8] Father included in his informal brief several attachments, some of which contain sensitive and inappropriate material. On July 18, 2022, we issued an order shielding the attachments and directing Father to show cause in writing why the attachments to his informal brief should not be stricken. In response, Father contends, *inter alia*, that the attachments undermine Mother's credibility and "are RELEVANT and specifically address subjects, testimony . . . etc. captured in the 3/11/22 [hearing] and ALL previous hearings."

First, we remind Father that the only hearing that is the subject of this appeal is the March 11, 2022 hearing. Matters raised and decided in "ALL previous hearings" in the divorce/custody case are not before us. Second, there is no indication that the attachments were admitted as exhibits at the hearing. As this Court has advised, "an appellate court must confine its review to the evidence actually before the trial court when it reached its decision." *Cochran v. Griffith Energy Service Inc.*, 191 Md. App. 625, 663, *cert. denied*, 415 Md. 115 (2010). "Parties to an appeal are not entitled to supplement the record by inserting . . . foreign matter as [they] may deem advisable." *Id.* at 662-63 (quoting *Rollins v. Cap. Plaza Assocs., L.P.*, 181 Md. App. 188, 200 (2008)). Our Court explained,

> This restriction is inherent in the scope of review prescribed by Rule 8-131, which generally limits the task of an appellate court to deciding only those issues that "plainly appear[ ] by the record to have been raised in or decided by the trial court." Md. Rule 8–131(a). Facts outside the record cannot be argued to or considered by the trial court, and thus have no influence on its judgment. Accordingly, an appellate court must confine its review to the evidence actually before the trial court when it reached its decision. This is true regardless of whether the excluded fact(s) existed at the time of trial.

Cochran, 191 Md. App. at 663 (citation omitted). Accordingly, the attachments included in Father's informal brief shall be stricken. *See id.*

659 (2011) (emphasis in original). Viewing the evidence in the light most favorable to Mother, we conclude that there was sufficient evidence for the court to grant the final protective order.

JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.