Circuit Court for Baltimore County
Case No. C-03-FM-22-810923

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 1812

September Term, 2022

STEPHANIE COPPEL

v.

BRAD COPPEL

Leahy,
Shaw,
Sharer, J. Frederick
(Senior Judge, Specially Assigned),

JJ.

Opinion by Shaw, J.

Filed: November 22, 2023

*This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for its persuasive value only if the citation conforms to Rule 1-104(a)(2)(B).

On December 9, 2022, following a hearing in the Circuit Court for Baltimore County, Appellee Brad Coppel was granted a final protective order on behalf of his two minor children against their mother, Appellant Stephanie Coppel. The Court issued an order that expired on June 8, 2023, and stated that Ms. Coppel was not to abuse or threaten to abuse the children.

Ms. Coppel timely appealed and presents three questions for our review[1]:

1. Does the existence of collateral consequences permit appellate review even though the Final Protective Order has expired?

2. Did the trial court err by admitting the Minor Children's out-of-court statements to Father regarding the disputed allegations of abuse?

3. Did the trial court's decision to admit hearsay statements prejudice the outcome of the case?

For the following reasons, we reverse and remand.

BACKGROUND

On December 2, 2022, Appellee Brad Coppel filed a Petition for a Temporary Protective Order in the Circuit Court for Baltimore County, on behalf of his minor children, C.C. and G.C., alleging that they had been abused by their mother, Appellant Stephanie Coppel. *See generally* Md. Code Ann., Family Law ("FL") § 4-505 (governing temporary protective orders). The petition claimed that Mother had "shoved [C.C.] back into his bedframe" resulting in a "visible scratch on [C.C.]'s neck" and "shoved [G.C.] out of the kitchen, resulting in a scratch on [G.C.]'s belly." A Temporary Protective Order was granted, and, pursuant to FL § 4-505(e), a case referral was made to the Baltimore County

[1] Mother's questions have been reordered for clarity.

Department of Social Services. A social worker from the Department conducted individual interviews with the children and issued a report to the court. The report was subsequently reviewed by the parties, but it was not introduced into evidence at the final protective order hearing held on December 9, 2022.

Father testified at the hearing and relayed to the court that C.C. told him that he "was pushed and fell back and banged the back of [his] head and neck . . . on the corner of [his] bed frame." Mother repeatedly objected to Father's testimony regarding C.C.'s out-of-court statements:

> FATHER: I noticed [C.C.] had a red mark on his neck and I asked him what it was, if it was like a bug bite or something. And he said no, but he wanted to-
>
> MOTHER'S COUNSEL: Objection.
>
> TRIAL COURT: Overruled.
>
> FATHER: He wanted to tell me about it later that evening when it was just the two of us and so I said okay, that's fine. So that night while he was in the shower, I was kind of hanging out in the bathroom talking to me [sic] and he asked if he could tell me what happened to his neck and I said yes. And he said that-
>
> MOTHER'S COUNSEL: Objection.
>
> TRIAL COURT: Overruled.
>
> FATHER: -- the previous Tuesday when he was with [Mother] they had picked up McDonald's prior to going to karate class so both kids are in karate, they would have been there for about an hour and a half. After karate they went home to then eat the food for dinner and [C.C.] didn't want to eat his dinner because it was cold at that point. So he said [Mother] put them in the microwave to warm them up for him but then they became mushy so he still didn't want to eat them. They – he said they

got into a heated verbal argument, lots of yelling and screaming. He went up to his room where he became very destructive, ripping up his bed, pulling the sheets off of it, throwing some things around. He said eventually she came up to check on him and saw the state of his room and told him that he should -

MOTHER'S COUNSEL: Objection. Hearsay within hearsay at this point.

TRIAL COURT: Well, it's been hearsay the whole time. I'm aware of that. Thank you.

FATHER: No, so then later that night he came downstairs and told me that he was very afraid of going back-

MOTHER'S COUNSEL: Objection. I'm just going to have to object, Your Honor.

TRIAL COURT: All right. There will be a continuing objection --

MOTHER'S COUNSEL: Thank you.

TRIAL COURT: -- to whatever it is [C.C.] said. I note that it is hearsay. I'm overruling the objection. Go ahead.

FATHER: After his bedtime he came downstairs and told me that he is very afraid of going to [Mother's] house. That he was afraid that he – he understood he didn't get seriously hurt but he was afraid that he might in the future.

Father also testified as to what his daughter, G.C., told him.

MOTHER'S COUNSEL: Objection as to what his wife said that [G.C.] said.

THE COURT: Sustained. You can't start telling me what your wife said, your ex-wife said. You can't do it.

FATHER: Understood. So later that evening [G.C.] told me that --

> TRIAL COURT: That doesn't work either. That's hearsay. You can't tell me what somebody else said.
>
> FATHER: [G.C.] is my daughter.
>
> TRIAL COURT: I understand that.
>
> FATHER'S COUNSEL: I'm sorry. Your honor, just to clarify. We're treating the statements that [C.C.] made to my client and the statements that [G.C.] made to my client differently?
>
> TRIAL COURT: [G.C.] is how old?
>
> FATHER'S COUNSEL: Five.
>
> TRIAL COURT: And you want to tell me what [G.C.] said; is that right?
>
> FATHER: That's correct.
>
> TRIAL COURT: Not what your wife said.
>
> FATHER: Correct.
>
> TRIAL COURT: All right. I'll allow it. Over objection.
>
> FATHER: So [G.C.] told me that the previous morning while they were getting ready to go to school [C.C.] and [Mother] got into a verbal argument because [C.C.] did not want to eat his waffle for breakfast. She said they were yelling and [Mother] asked [G.C.] to leave the kitchen so she could have a private conversation with [C.C.]. [G.C.] told me that she didn't want to leave the kitchen and [Mother] pushed her out of the kitchen resulting in a small scratch on her belly.

Mother then testified and denied the allegations of abuse. The parties gave closing arguments and during Appellant's argument, the judge clarified that the DSS report was not entered into evidence:

> MOTHER'S COUNSEL: Now I'm compelled to. But I'm just focusing on the two paragraphs where the DSS worker interviewed the children. [G.C.] said –
>
> THE COURT: You mean that document that nobody bothered to put into evidence? That one?
>
> MOTHER'S COUNSEL: Yes, that one.
>
> FATHER'S COUNSEL: Your Honor, I believe that's part of the Court's file.
>
> THE COURT: No.
>
> MOTHER'S COUNSEL: No? Okay. Well if it's not in evidence then I can't reference it.

At the conclusion of the hearing, the court found "there was some sort of an assault on both children in that I do believe that there was some marking on the children to the extent of which is minor, imposed by mom." The trial court granted a final protective order, effective until June 8, 2023, that stated:

> 1. This order is effective through 06/08/2023 at 11:59 PM.
>
> 2. Respondent SHALL NOT abuse, threaten to abuse [C.C.], [G.C.].
>
> 3. Custody shall remain joint
>
>   CUSTODY SHALL REMAIN AS SET FORTH IN C-03-FM-19-3371
>
> 4. Respondent SHALL participate in the following domestic violence and/or other professional supervised counseling program(s): FAMILY TREE OR SIMILAR PROGRAM
>
>   The person eligible for relief SHALL participate in the following domestic violence and/or other professional supervised counseling program(s): FAMILY TREE OR SIMILAR PROGRAM

5. Respondent SHALL immediately surrender all firearm(s) to BALTIMORE COUNTY POLICE and refrain from possession of any firearm, for the duration of this Final Protective Order.

6. Additional Conditions:
PETIONER SHALL ATTEND FAMILY TREE OR SIMILAR PROGRAM

STANDARD OF REVIEW

A circuit court may grant a final protective order "if the judge finds by a preponderance of the evidence that the alleged abuse has occurred[.]" FL § 4-506(c)(1)(ii). "Abuse" is defined as "the 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[.]" FL § 5-701(b)(1)(i).

On appeal, we accept the trial court's findings of facts unless they are clearly erroneous. Md. Rule 8-131(c); *Piper v. Layman*, 125 Md. App. 745, 754 (1999). If the court's factual findings are supported by substantial evidence, we will not disturb them. *Ryan v. Thurston*, 276 Md. 390, 392 (1975). In reviewing the ultimate decision to grant a final protective order, we independently apply the law to the particular facts of the case. *Piper*, 125 Md. App. at 754.

DISCUSSION

I. The appeal is proper.

Generally, appellate courts do not opine on abstract propositions or moot questions. *State v. Ficker*, 266 Md. 500, 506–07 (1972). A case is considered moot when there is no longer an existing controversy between the parties at the time it is before the court. *Coburn v. Coburn*, 342 Md. 244, 250 (1996). However, when a party can demonstrate that collateral consequences flow from a lower court's disposition, mootness does not necessarily preclude appellate review. *D.L. v. Sheppard Pratt Health Sys., Inc.*, 465 Md. 339, 352 (2019).

In *Piper v. Layman*, this Court explained, in allowing the appeal, that there are two collateral consequences for a person against whom a final protective order has been granted and thus, the person "has an interest in exoneration even if the period of the protective order has expired without incident." 125 Md. App. 745, 753 (1999). First, a judicial determination that a person has abused their children creates a lasting stigma and a final protective order "is a permanent record of the court." *Id.* at 752-53 (discussing the negative societal perception towards a person who has committed abuse under the Domestic Violence Act, particularly for "a person who has unfairly or inaccurately been labeled an abuser"). Considering the stigma that is likely to attach, the expiration of the protective order does not automatically render the matter moot. *Id.* at 753. The review of such findings on appeal, and the potential for vacation of the order, thereby removing the stigma, gives "substance to [an] appeal." *Williams v. Williams*, 63 Md. App. 220, 226 (1985).

Second, if the petitioner seeks another protective order against the respondent parent, the court has the discretion to consider the prior order. *See Coburn v. Coburn*, 342

Md. 244, 250 (1966) (holding that prior acts of abuse are admissible and relevant in determining whether abuse occurred). If another petition is filed, a judge will assume that Appellant had previously committed "some sort of assault" on the minor children. This information would be properly considered by the court because "one act of abuse may not warrant the same remedy as if there is a pattern of abuse between the parties." *Coburn*, 342 Md. at 258; *see also Streater v. State*, 352 Md. 800 (1999) (holding that a prior protective order was admissible in a stalking and harassment trial subject to evaluation under Maryland Rule 5–404(b)). The Domestic Violence statute provides that if another act of abuse is committed by "the same respondent" against "the same person[s] eligible for relief" within one year after the expiration of a prior protective order, the court can issue a second final protective order that will be in effect for a term of two years. FL § 4-506(j); *Piper*, 125 Md. App. at 752. We note that there may also be employment, security clearance and licensure issues as a result of the issuance of a protective order. *Piper*, 125 Md. App. at 753.

The final protective order here was issued on December 9, 2022, and expired on June 8, 2023. Because the order has expired, there is no longer an existing controversy. *Suter v. Stuckey*, 402 Md. 211, 219 (2007); *see also La Valle v. La Valle*, 432 Md. 343, 351 (2013). However, considering both the lasting stigma that attaches when someone is found to be an abuser, and the repercussions on Appellant if the petitioner ever seeks a second protective order, the impact of collateral consequences is sufficient to overcome the fact that the protective order has expired. We, therefore, shall examine the merits of this appeal.

II. The court erred in admitting hearsay testimony.

Mother argues the court erroneously admitted out-of-court statements made by the children through Father's testimony and Father concedes that the court erred in admitting the hearsay testimony. We also agree that the court erred.

Maryland Rule 5-801 defines hearsay as "a statement, other than the one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted." Maryland Rule 5-801(c). Hearsay is not admissible unless it falls under a recognized exception and judges do not have discretion to admit hearsay statements without an applicable exception. *Bernadyn v. State*, 390 Md. 1, 8 (2005). Whether evidence is hearsay is an issue of law to be reviewed *de novo*. *Id.*

Here, at the final protective order hearing, the children did not testify, and Father was allowed to testify and detail statements made by the children to him regarding the incidents. Father's statements were offered to prove that Mother intentionally inflicted physical harm on the minor children. Mother timely objected to the testimony and at each instance, the court overruled her objections. The court also noted, on more than one occasion, that the testimony was hearsay. Before this Court, the parties agree that the testimony was hearsay evidence and neither party has asserted that the testimony was admissible under a hearsay exception. As such, the admission of the statements by the minor children was erroneous. That, however, does not end our inquiry.

Judge Irma S. Raker, in *Flores v. Bell*, explained:

> It has long been the policy in this State that [appellate courts] will not reverse a [trial] court judgment if the error is harmless. The burden is on the complaining party to show prejudice as

> well as error. Precise standards for determining prejudice have not been established and depend upon the facts of each individual case. Prejudice can be demonstrated by showing that the error was likely to have affected the verdict [or judgment] below; an error that does not affect the outcome of the case is harmless error. We have also found reversible error when the prejudice was substantial. The focus of our inquiry is on the probability, not the possibility, of prejudice.

Flores v. Bell, 398 Md. 27, 33-34 (2007) (internal citations omitted); *see also Barksdale v. Wilkowsky*, 419 Md. 649 (2011). One way to determine whether erroneously admitted evidence was prejudicial or harmless to the outcome of the trial court is to evaluate whether the same (or similar) evidence was properly introduced by another method. *See Gillespie v. Gillespie*, 206 Md. App. 146, 168-69 (2012).

Father contends that other evidence was admitted during the course of the hearing that established the children had been abused. He contends that Mother admitted she had physical contact with the children, and he testified that he observed scratches on the children. According to him, the DSS report was a court record and "it was proper to be reviewed and relied on . . . . The ability to rely on the DSS report further eliminates any prejudice from inadmissible hearsay." While Father did not raise the argument in his brief, during oral argument before this Court, Father's counsel stated that Mother's acknowledgement of a sentence in the DSS report on cross examination by Ms. Koning, Father's trial counsel, was properly admitted and was similar evidence:

> FATHER'S COUNSEL: Okay. And so [C.C.] stated that he's been hurt by you essentially many times; correct?
>
> MOTHER'S COUNSEL: Objection as to the characterization of what [the DSS report] says.

TRIAL COURT: Overruled.

MOTHER: It does say that.

Under Section 4-505(e) of the Family Law Article, which pertains to temporary protective orders, if a court "finds reasonable grounds to believe that abuse of a child ... has occurred, [it] shall forward to the local department a copy of the petition and temporary protective order." The local department is then required to "investigate the alleged abuse" and to "send to the court a copy of the report of the investigation" "by the date of the final protective order hearing." FL § 4-505(e). Rule 5–803(8)(iv), governing exceptions to the hearsay rule, allows "factual findings reported to a court pursuant to [FL section 4–505(e)]" to be admitted as a public record at a final protective order hearing, "provided that the parties have had a fair opportunity to review the report." *See* Md. Rule 5–803(b)(8)(iv). The Rule allows the court and the parties to rely upon the findings of the report without the presence of the CPS worker, effectuating the remedial purpose of the domestic violence subtitle. *See Coburn v. Coburn*, 342 Md. 244, 252 (1996). A DSS report falls under this hearsay exception and it *may* be admitted. However, there is no statute or Rule that suggests the DSS report is *automatically* admitted. The report goes directly to the court for safekeeping and this function is consistent with Md. Code Ann. Human Servs. § 1-202, which controls the confidentiality of records concerning allegations of child abuse and neglect. Upon the parties' review, a party may move to admit the report into evidence. However, that did not happen here.

We note, also, that the single sentence acknowledged by Mother during her testimony did not relate to or substantiate the allegations in Father's petition. Her

testimony, therefore, could not have been relied upon by the court in determining whether she had committed the acts of abuse. Her testimony simply did not constitute same or similar evidence.

Father did not call any other witnesses, he did not seek to introduce the DSS report into evidence, nor did he introduce photographs of the alleged injuries. Father did testify that he saw marks on the children, and he argues that Mother admitted she had physical contact with the children. However, the circumstances that gave rise to that interaction were only presented to the court through the hearsay statements.

As we see it, the hearsay statements constituted the entirety of the case, and the statements were substantially prejudicial to the outcome of the case. Accordingly, we hold that the error was not harmless.

JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE COUNTY REVERSED; COSTS TO BE SPLIT.