Circuit Court for Frederick County
Case No. C-10-FM-25-807688

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 51

September Term, 2025

MICHELE FACUNDIM

v.

SCOTT SHEPARDSON

Arthur,
Leahy,
Eyler, James R.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Arthur, J.

Filed: August 8, 2025

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

The parents of a five-year-old child petitioned for protective orders against each other. The Circuit Court for Frederick County denied the mother's petition, granted the father's petition, gave the father primary physical custody of the parties' five-year-old daughter, and terminated the father's obligation to pay child support (though not his obligation to pay any arrearages).

The mother appealed. We affirm.

FACTUAL AND PROCEDURAL HISTORY

Michele Facundim ("Mother") and Scott Shepardson ("Father") are the parents of a five-year-old daughter, "A."[1] Mother and Father were married in 2018. The parties initiated divorce proceedings in 2022. As of early 2025, the parents' access to A. was governed by a pendente lite order, under which they had shared physical custody and Father was required to pay $334.00 per month in child support.

In February 2025, Mother and Father each petitioned for a protective order against the other on behalf of A. Mother's petition alleged that Father had touched A. inappropriately. Father's alleged that Mother had "continuously subject[ed]" A. to "various types of mental testing/assessments/evaluations," including allegedly unnecessary "forensic examinations . . . for sexual abuse."

The parties appeared in circuit court on March 7, 2025, for a final hearing on both parties' petitions. Mother presented her case first.

[1] We have randomly selected the letter "A." to refer to the child.

Mother testified that she has complained to CPS and several doctors about Father's behavior with A. Mother described a time in 2022 when she called CPS because A. woke up in the night screaming, "[D]addy, no." Mother claimed that she had to call CPS after that incident, because if she did not, then she would have been "neglect[ing]" A.

Mother testified that she brought A. to the emergency department in August 2023 because she believed that Father had drugged her with "Benadryl or something else." The doctor tested A. for the presence of oxycodone and cocaine, among other substances. The doctor did not find the presence of any drugs in A.'s system.

Mother recalled another time in 2023 when she brought A. to the hospital for a forensic interview. Mother asked the doctor to test A. for sexually transmitted diseases ("STDs"). A. tested negative for all STDs.

In 2024, Mother reported to the Maryland State Police that Father had slapped A.'s butt. Mother testified that A. had three appointments with a psychologist and spoke to police officers in connection with that allegation.

Mother and counsel for Father examined Mother about her latest allegation and the subsequent DSS report. Mother testified that she had taken A. to her pediatrician in February 2025. Mother stated that, at the appointment, she encouraged A. several times to share with the pediatrician what she allegedly told Mother. Mother testified that, after she and the pediatrician asked A. about the difference between "good touch" and "bad touch," A. told the pediatrician that Father had "pinched" her vagina.

Mother agreed with counsel for Father that she brought A. to the pediatrician that day not because A. had told her that Father pinched her vagina, but because A. told her that Father had "pulled [her] underwear to the side and was touching her . . . vaginal area[.]" Counsel for Father asked Mother about the discrepancy between what she told the pediatrician and what A. told the pediatrician and DSS worker. Mother said that the discrepancy "[d]oesn't matter." Mother agreed, however, that she had "gotten Frederick County CPS . . . involved in [the] family as it relates to [A.]" ten separate times in the past two years.

Father called Kelsey Eitnier, a licensed social worker at Frederick County DSS. Ms. Eitnier testified that she investigated Mother's 2024 allegation that Father left A. outside the house without a jacket and "spit in her face and smacked her bottom." Ms. Eitnier stated that she closed her case "without any findings." The court told Ms. Eitnier that the DSS report in this case indicated that there had been ten previous reports that were all "screened out." The court asked what "screened out" meant. Ms. Eitnier responded that it meant that DSS "didn't deem [the report as] reaching the threshold . . . of being investigated."

Father testified. He told the court that he sought a protective order because he was "extremely concerned for the well-being of [A.]" because of the number of times she had been tested and interviewed in connection with Mother's various allegations. Father testified that A. is "now scared of police officers because [they have] conducted multiple welfare checks" of his house. Father stated that during one of the welfare checks A.

"literally hid under a blanket on the couch" when the officers entered the house. He testified that officers have conducted some of the welfare checks "almost as late as midnight." He described the evaluations of A. as "constant."

Counsel for Father asked him to describe his version of the events that led to Mother's latest protective order petition. Father stated that, at a playground, A. had "come off the slide kind of quick." He testified that he went over to the base of the slide and had A. sit on his knee. According to Father, A. told him that she had fallen on her butt, and he "brush[ed] her off" and allowed her to continue playing. Father testified that, besides that incident, he had touched A.'s private areas only to assist her with cleaning herself in the bathroom.

On cross-examination, the court asked Father if he had a response to the DSS report, which stated that A. told her pediatrician that he had "pinched" her vagina. Father responded that "[A.'s] idea of a pinch might be something different than what . . . we define as [a pinch.]" He insisted that he had "never done anything inappropriate to [A.]"

The court ruled from the bench. It addressed Mother's petition first. The court was unpersuaded that Father sexually abused A. Although the author of the DSS report did not testify, the court stated that it had read the report. The court found it notable that, according to the DSS worker who prepared the report, A. "knew what good touch was [and] knew what bad touch was," but did not tell the reporter that anyone had touched her inappropriately. The court stated that it did not believe that Father abused A., even

though it was "convinced" that Mother is sincere in her beliefs. The court denied Mother's petition.

The court turned to Father's petition. The court found that the process of A. "being pulled out of school and interviewed [and] being checked for drug overdoses" had "gone on again and again and again." It found that Mother's "multiple, unwarranted allegations of sexual and physical abuse," which led to "multiple examinations," was causing the child to suffer "mental abuse, statutory mental abuse." The court expressed its belief that "Mother is trying to build a custody case by using . . . the protective order system and the Child Protective Service system" against Father.

The court granted Father's petition. It awarded Father physical custody of A. and ordered that Mother be entitled to supervised visitation. The court noted that it had previously entered a pendente lite order under which the parties had shared physical and legal custody and Father was required to pay child support. The court ordered that if Father owed child support arrearages in connection with that order, he should pay them, "but any current child support should be terminated."[2]

Mother noted a timely appeal.

QUESTIONS PRESENTED

Mother presents two questions for our review:

1. Did the circuit court err when it granted Father's petition for a final protective order on grounds of mental abuse?

[2] According to MDEC, the final merits hearing in the divorce action is scheduled to begin only a few days from today, on August 13, 2025.

2. Did the circuit court err when it terminated Father's pendente lite child support obligation?

We discern no error and affirm the circuit court's judgment.

STANDARD OF REVIEW

When reviewing an action tried without a jury, "we accept the circuit court's findings of facts, unless they are clearly erroneous." *C.M. v. J.M.*, 258 Md. App. 40, 58 (2023). The clearly erroneous standard is "'a deferential one, giving great weight' to the trial court's findings." *Gizzo v. Gerstman*, 245 Md. App. 168, 200 (2020) (quoting *Viamonte v. Viamonte*, 131 Md. App. 151, 157 (2000)). We give "due regard to the opportunity of the trial court to judge the credibility of the witnesses." Md. Rule 8-131(c). We "'consider evidence produced at the trial in a light most favorable to the prevailing party[.]'" *Clickner v. Magothy River Ass'n Inc.*, 424 Md. 253, 266 (2012) (quoting *Ryan v. Thurston*, 276 Md. 390, 392 (1975)). We review the court's legal conclusions, however, without deference. *Id.*

DISCUSSION

I.

Mother argues that the circuit court erred when it granted Father's petition for a final protective order on the grounds of mental injury to a child.

"'Mental injury' means the observable, identifiable, and substantial impairment of a child's mental or psychological ability to function caused by an intentional act or series of acts, regardless of whether there was an intent to harm the child." Maryland Code (1984, 2019 Repl. Vol.), § 5-701(r) of the Family Law Article ("FL"). Mother asserts

that Father "presented no evidence" of A.'s observable, identifiable, and substantial impairment. The sum and substance of Mother's support for that assertion is that Father "presented no medical testimony to support the final protective order[.]"

Mother's brief contains almost no argument to support her contention that a court can find mental injury to a child only on the basis of expert medical testimony. Maryland Rule 8-504(a)(6) requires a party to submit to this Court "[a]rgument[s] in support of the party's position on each issue." We have consistently declined to address issues that are not supported in a party's brief by argument or authority. *See, e.g.*, *HNS Dev., LLC v. People's Counsel for Baltimore County*, 425 Md. 436, 459 (2012); *Kramer v. Mayor and City Council of Baltimore*, 124 Md. App. 616, 636 n.4 (1999). In fact, we have declined to consider an argument quite similar to Mother's—the argument that "only expert testimony can sustain a finding of mental injury"—when a parent "cite[d] no case law or rationale" for the argument. *See C.M. v. J.M.*, 258 Md. App. 40, 62 n.3 (2023).

Nonetheless, we have some concern about the adequacy of the evidence to support the finding of mental injury by Mother. We recently discussed the kind of evidence that would support that finding in *C.M. v. J.M.*, 258 Md. App. at 61, where we upheld a finding that a Father had mentally abused his son. In that case, the judge had spoken to the child, who was about 12 years old. On the basis of its observations, the court concluded that the child "was 'frightened,' 'scared,' and 'fearful' of his Father's anger and his Father's refusal to accept his sexual orientation." *Id.* The court stated that it "'saw with [its] own eyes'" the child's fear about his Father's anger regarding his sexual

orientation." *Id.* The court had a text-message in which the father had characterized more tolerant family members as "demons." *Id.* The court also had a "CPS report in which the social worker related that [the child] told her that he does not feel safe with Father, and he fears that Father might hit him because Father is angry and does not accept [his] sexual orientation." *Id.* Finally, the court heard from the child's mother, who testified that when she asked whether the child was okay after a disturbing incident with his father, the child responded, "'I am no[w,]' clearly suggesting that [he] was not okay when he had been with Father." *Id.*

Here, by contrast, we have almost no evidence about the impact of Mother's conduct on A.'s mental health or welfare. The court did not hear from A., from anyone who had treated or cared for A, or from anyone else who had interacted with A. that A. had an "observable, identifiable, and substantial impairment of her mental or psychological ability to function." FL § 5-706(r). At most, we have Father's testimony that A. is afraid of the police because of the "multiple" welfare checks that they have conducted and that, during one, she hid under a blanket. In our judgment, that evidence alone would not support the finding of an "observable, identifiable, and substantial impairment of a child's mental or psychological ability to function." FL § 5-701(r).

In rendering its decision, however, the court referred not only to "statutory mental abuse," but more broadly, to "mental abuse" in general. FL § 5-701(b)(1)(i) defines "abuse" to mean "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." (Emphasis added.) On this record, the circuit court could readily find that A. was at a "substantial risk of being harmed" by Mother's conduct—repeatedly subjecting her to unnecessary medical tests, examinations, and evaluations. Here, the relief granted—a protective order—"went to addressing the substantial risk of harm to [A.] and the risk of future harm." *C.M. v. J.*M., 258 Md. App. at 70. The court could not protect the child from the "substantial risk of being harmed" if it were required to wait until the impairment of the child's mental or psychological ability to function became "observable, identifiable, and substantial." Therefore, the court did not err in granting the protective order. *See id.*

II.

Mother contends that the circuit court erred when it terminated Father's pendente lite child support obligation as part of its protective order. In support of that contention, she argues only that the court was limited to granting the methods of relief listed in FL § 4-506(d).

Section 4-506(d) begins by stating that a final protective order "may include any or all of the following relief[,]" The statute proceeds to enumerate 14 types of relief, the last of which is "any other relief that the judge determines is necessary to protect a person eligible for relief from abuse." FL § 4-506(d)(14).

When the statute states that a final protective order "may include any or all of the following relief," it does not "preclude[] a court from providing other kinds of relief, if appropriate in the circumstance[.]" *Katsenelenbogen v. Katsenelenbogen*, 365 Md. 122,

137 n.3 (2001). "[T]he statute appropriately gives discretion to the trial judge to choose from a wide variety of available remedies in order to determine what is appropriate and necessary according to the particular facts of that case." *Coburn v. Coburn*, 342 Md. 244, 258 (1996). The final, catch-all provision empowers a court to give forms of relief that are not specifically enumerated in the preceding subsections. *See Katsenelenbogen v. Katsenelenbogen*, 365 Md. at 138 n.3 (rejecting the contention that a court must choose from the remedies specifically enumerated in the statute).

In this case, terminating Father's pendente lite child support obligation was appropriate to fashion a sensible remedy. Under the terms of the pendente lite order, Father and Mother shared physical custody of their daughter. In those circumstances, Mother's status as a custodial parent dictated that she should be awarded child support for A.'s benefit while she was responsible for A.'s care.

The final protective order, however, temporarily changed Mother's status to a non-custodial parent, in that the court limited Mother to supervised visitation with A. during the term of the order. It would be illogical to order Father to continue to pay Mother for A.'s benefit when "[a] parent owes [an] obligation of support to the child, not to the other parent[.]" *Lacy v. Arvin*, 140 Md. App. 412, 422 (2001). Thus, the court could reasonably determine that the temporary termination of ongoing child support payments was necessary to protect A. from abuse (FL § 4-506(d)(14)) because it would conserve the financial resources of Father, who had sole physical custody during the pendency of

the protective order, by relieving him of the obligation to transfer resources unnecessarily to Mother, who no longer had shared custody.[3]

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

[3] Mother cites *O'Brien v. O'Brien*, 136 Md. App. 497 (2001), *rev'd on other grounds*, 367 Md. 547 (2002), for the proposition that the obligation to pay child support does not end until a parent successfully moves to modify the child support order. The short answer to Mother's contention is that *O'Brien* does not involve the intersection of the child support statute and the protective order statute.