Circuit Court for Montgomery County
Case Nos. 145654FL & 173609FL

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

Nos. 0110 and 0111

September Term, 2021

XOCHTIL GAMEZ

v.

DAVID LOPEZ

Reed,
Wells,
Zarnoch, Robert A.,
(Senior Judge, Specially Assigned)

JJ.

Opinion by Wells, J.

Filed: October 5, 2021

On March 5, 2021, the Circuit Court for Montgomery County held a Protective Order Hearing between the petitioner, Xochitl[1] Gamez ("Mother")[2], and the respondent, David Lopez ("Father"). At the Protective Order Hearing, Mother alleged that Father had abused the parties' minor son, L,[3] while L was visiting with Father. The Honorable Sharon V. Burrell denied the petition, finding "no reasonable grounds to believe that [Father] abused" L. Mother timely appealed the decision of the circuit court.

Less than two weeks later, on March 18, 2021, Judge Burrell held a hearing on Father's motion to modify custody. Father petitioned (1) that he be awarded primary residential custody of L; (2) that he be awarded sole legal custody of L on a temporary basis; (3) that Mother be enjoined from taking L to medical appointments until further order from the court; and (4) that a mental health evaluation be ordered for Mother. Judge Burrell denied the first three of Father's requested reliefs but ordered Mother to undergo a mental health evaluation. Mother again timely appealed the decision of the circuit court.

We have consolidated Mother's two appeals for oral argument, and we issue this opinion to resolve both appeals. Mother raises three questions in each of her appeals, which we have condensed and rephrased for clarity and organizational purposes:[4]

[1] Although the case caption, the appellant's own counsel, opposing counsel, and the trial court transcript misspells the appellant's given name, the correct spelling of her name is "Xochitl." The correct spelling of Xochitl's name is evidenced by numerous exhibits produced in the Record Extract, including, namely, her driver's license and her signature.

[2] We intend no disrespect towards the parties by referring to them simply by their parental appellations.

[3] Because L is a minor, we refer to him by an initial to preserve his privacy.

[4] Mother's verbatim questions on her appeal from the March 5, 2021 hearing read:

1. Did the trial court abuse its discretion by limiting evidence and testimony at the March 5, 2021 and March 18, 2021 hearings?
2. Did the trial court erroneously deny Mother's request for a final protective order?
3. Did the trial court erroneously order a mental health evaluation of Mother?

For the reasons that follow, we hold that the circuit court did not abuse its discretion by limiting evidence and testimony at either the March 5, 2021 or March 18, 2021 hearings, including evidence and testimony related to domestic violence. Moreover, we conclude

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I. WHETHER THE TRIAL COURT ABUSED ITS DISCRETION BY LIMITING THE EVIDENCE AND TESTIMONY AT THE MARCH 5, 2021 HEARING.

II. WHETHER THE TRIAL COURT ERRONEOUSLY EXCLUDED TESTIMONY AND EVIDENCE RELATED TO DOMESTIC VIOLENCE AGAINST THE MINOR CHILD.

III. WHETHER THE TRIAL COURT ERRONEOUSLY DENIED THE FINAL PROTECTIVE ORDER AND RULED CONTRARY TO LAW.

Mother's verbatim questions on her appeal from the March 18, 2021 hearing read:

I. WHETHER THE TRIAL COURT ABUSED ITS DISCRETION BY LIMITING THE EVIDENCE AND TESTIMONY AT THE MARCH 18, 2021 HEARING.

II. WHETHER THE TRIAL COURT ERRONEOUSLY EXCLUDED TESTIMONY AND EVIDENCE RELATED TO DOMESTIC VIOLENCE.

III. WHETHER THE TRIAL COURT ERRONEOUSLY ORDERED A MENTAL HEALTH EVALUATION OF PLAINTIFF/APPELLANT GAMEZWITHOUT *(sic)* ANY EVIDENCE OR TESTIMONY, AND RULED CONTRARY TO LAW.

that the circuit court did not err in not issuing a final protective order. Finally, we conclude that the circuit court did not abuse its discretion in ordering a mental health evaluation of Mother. Accordingly, we affirm the judgment of the circuit court.

FACTUAL BACKGROUND

A. Mother and Father's Marriage and Divorce

Mother was born in Montgomery County, Maryland and has resided there her entire life. Father has likewise resided in Maryland his entire life. The two married on September 10, 2014. L was born approximately a year and a half later to both parents in May 2016.

About a year after L's birth, the parties separated in May 2017. Upon their separation, a number of legal disputes arose between the parties, principally involving custody of L and accusations against each other of domestic violence. Rather than describing those individual disputes in detail, it is sufficient to briefly summarize the disputes which serve as a backdrop to these appeals.

We note first, however, that in their briefs, both parties exaggerate or misrepresent some of these disputes. For example, in her brief Mother claims that Father pled guilty to second-degree assault. In actuality, the second-degree assault charge was *nolle prosequied*. Father responds to this misstatement in his Motion to Dismiss the appeal, in part, by stating that his prior counsel signed an affidavit stating that "[o]n February 1, 2017, at the trial, Mother declared from the gallery of the courtroom that her testimony was false and Father had never touched her." However, after reviewing that affidavit and the record of the proceedings below, we are not able to find where Father's previous attorney proclaimed that "Mother declared from the gallery of the courtroom that her testimony was false, and

Father had never touched her." Moreover, in her Statements of Facts, Mother references a number of legal cases involving the parties to which she does not cite to any case in the record for support. Accordingly, without proper citations to the record, we will not consider these incidents.

Notwithstanding any exaggerations and misrepresentations made by counsel in their descriptions of the facts, we nonetheless gather from the record that the parties had a years' long series of disputes. For instance, in February of 2017, Child Protective Services of the Department of Health and Human Services ("CPS") found that L, nine months old at the time, "was exposed to domestic violence between" Father and Mother. Five months later, CPS again "received concerns of domestic violence between" the parties, and this time found that the allegation was "unsubstantiated." Soon after, the parties "began accusing each other of leaving bruises on" L. In October 2018, Father pled guilty to two counts of disorderly conduct stemming from a domestic relation incident with Mother.

Half a year later, April 2019, CPS "ruled out" that either party had neglected and physically abused L. Between May 2019 and February 2020, CPS completed four "screen outs" of similar concerns, meaning that the allegations reported did "not meet criteria to open an investigation. An additional "screen out" was completed by CPS in February 2020 regarding Mother's claim that Father and Father's sister, had sexually abused L. CPS determined that neither Father nor his adult sister posed a safety risk to L. Less than two months before the hearings at issue in this appeal, CPS investigated whether Mother had slapped L's face.

B. February 15, 2021 Rockville Police Station Drop-Off and the March 5, 2021 Protective Order Hearing

While the investigation against Mother for slapping L's face was ongoing, Mother raised new allegations against Father stemming from the exchange of L that led to the March 5, 2021 hearing. Specifically, Father was scheduled to return L to Mother on February 15, 2021 at the Rockville Police Station. According to Mother and her sister's testimony, they arrived at the police station to take custody of L. While Mother waited in the car, her sister, Cynthia "Cindi" Gamez ("Aunt") went to the vestibule of the police station to get L from Father. When picking up L, Aunt claims that she saw a mark on L's head and that he complained of a headache. According to Aunt, the boy told her that Father had hit him. Aunt took L to a clerk in the police station who called 911.

The night before, Mother had phoned the police requesting a safety check on L while he was visiting with Father. According to Mother, she had been on a call with L and heard "background noise" before Father got on the phone "screaming" and "yelling[.]" Mother testified that the next day, at the exchange in the police station, she was "very concerned" for L's well-being based on the prior night's events and went to the hospital with the boy.

According to subsequent police report in which Mother is the complainant, L indicated that his father "struck him in the head with fists several times the night before around 7pm-8pm." The investigating officer noted that while at the hospital, he noticed a bump on the front of L's head. During his interview with L, the officer testified that L told him that Father hit L twice with a fist.

At the March 5, 2021 protective order hearing, after listening to testimony from a social worker and the police officer on the scene, the court noted that as the petitioner, Mother bore "the burden of proving by a preponderance of the evidence that [Father] abused" L. "Based on all of the evidence presented, the [c]ourt f[ound] no reasonable grounds to believe that [Father] abused" L. In coming to this conclusion, the court specifically noted (1) the testimony of the social worker, whom the court noted did not believe that Father had hurt L, (2) the forensic examination, (3) the medical reports, (4) the photos admitted into evidence, and (5) the testimony of the police officer who testified that L "was happy and playing and giggling when he was at the hospital and talking to the police officer." Accordingly, the court denied Mother's petition.

C. March 8, 2021 Rockville City Police Station Scheduled Drop-Off and the March 18, 2021 Motions Hearing

Following the March 5, 2021 hearing, L was in Father's care from 3:00 p.m. on March 5, 2021 to 5:00 p.m. on March 7, 2021. Upon L's return Mother noticed a red mark on L's face and once again alleged that Father physically abused L. Mother took L to a doctor to examine the red mark, according to Father, without even asking him about the source of the red mark. Then, on March 10, 2021 Mother refused to bring L to the scheduled drop-off for Father's visitation. Father was able to pick up L a day later, March 11, 2021. However, that same day, CPS also interviewed L, Father's mother, and Father's sister, Sue Ann Mercedes Lopez ("Paternal Aunt"), based on abuse allegations. CPS determined that the abuse allegations did not merit an investigation. After L returned to Mother's care on March 15, 2021, Mother again took L to the doctor alleging that Father had physically

abused L because of a rash on the back of L's neck. This happened even though Father told Mother that the redness was nothing more than a sunburn that L got after riding his bicycle over the weekend.

On March 17, 2021, Mother was again scheduled to drop-off L to visit with Father. When Paternal Aunt appeared at the Rockville Police Station to pick up L, Mother refused to let L go, this time alleging that Paternal Aunt sexually abused the child. Mother had also alleged that Paternal Aunt sexually abused L in 2020, but CPS found no validity to the allegation. Based on these events, all occurring after the March 5, 2021 hearing, Father asked the circuit court (1) to award temporary primary residential custody of L to Father, (2) to award sole legal custody on a temporary basis of L to Father, (3) to enjoin Mother from making any medical appointments for L until further notice, and (4) to order Mother to submit to a mental health evaluation.

After hearing arguments from both parties as well as testimony from Paternal Aunt, Mother, and Father, the court declined to grant Father's requests to change custody, but did issue a warning to Mother that if she continues to withhold L from visiting with Father, the court would entertain a change in custody. The court also declined to enjoin Mother from making medical appointments for L but did order Mother to inform Father of any medical appointments in advance. Finally, the circuit court ordered Mother to submit to a mental health evaluation. It is from that order which Mother now appeals.

STANDARD OF REVIEW

When reviewing child custody cases, our Court applies "a three-tiered, interrelated standard of review." *In re Adoption of K'Amora K.*, 218 Md. App. 287, 301 (2014). As

the Court of Appeals aptly explained in child custody cases:

> [First, w]hen the appellate court scrutinizes factual findings, the clearly erroneous standard . . . applies. [Secondly, i]f it appears that the [court] erred as to matters of law, further proceedings in the trial court will ordinarily be required unless the error is determined to be harmless. Finally, when the appellate court views the ultimate conclusion of the chancellor founded upon sound legal principles and based upon factual findings that are not clearly erroneous, the [court]'s decision should be disturbed only if there has been a clear abuse of discretion.

In re Yve S. 373 Md. 551, 586 (2003) (quoting *Davis v. Davis*, 280 Md. 119, 125-26 (1977)). Accordingly, we review any factual findings by the circuit court under the clearly erroneous standard. *See id.* Moreover, we review the conclusions of the circuit court based on sound legal principals and non-erroneous factual findings under an abuse of discretion standard. *See id.*

ARGUMENT

I. EVIDENCE AND TESTIMONY AT HEARINGS

A. Parties' Contentions

March 5, 2021 Hearing

Mother argues that the trial court abused its discretion by limiting evidence and testimony at the March 5, 2021 hearing. First, Mother contends that she and "other available witnesses were not permitted to testify." Mother similarly argues that "no other documentary evidence was permitted to even be proffered to the trial court." Mother contends that by limiting her presentation of evidence, the trial court abused its discretion. Mother further asserts that the trial court erroneously excluded testimony and evidence relating to L's injuries. Mother claims that the trial court "refused to hear" testimony and

consider evidence relating to L's "serious head injury," which she contends was literally inflicted with Father's hands.

Father responds that the issues that Mother raises regarding the exclusion of testimony and evidence are not preserved for appeal as Mother's trial counsel failed to object and failed to proffer any other witnesses that were subsequently excluded at the March 5, 2021 hearing. Further, Mother's contention that the court refused to allow any other documentary evidence is similarly not preserved, so Father contends, because Mother's attorney also failed to object or proffer any other documentary evidence which was subsequently excluded. Next, Father argues that Mother failed to show that she suffered prejudice from the exclusion of evidence as required under Maryland law. Finally, Father argues that the trial court did not ignore evidence relating to L's injury as the trial court did in fact admit into evidence testimony of L's injury and further documentary evidence relating to it.

March 18, 2021 Hearing

Mother argues that at the hearing on March 18, 2021, the trial court erroneously excluded all evidence relating to the protective order proceedings, all evidence relating to L's injuries, and limited testimony to a discussion of March 17, 2021. Mother argues that the trial court also improperly prohibited her from addressing the allegations in Father's Emergency Motion.

In response, Father argues, first, that Mother's argument is not preserved for appellate review as she failed to object to the limitation of the scope of the March 18, 2021 hearing after the trial court directed the parties to limit the discussion to matters since the

March 5, 2021 hearing. Second, contrary to what Mother claims, Father argues that the trial court allow her to address allegations in Father's Emergency Motion, which Mother promptly did. Again, Father argues that Mother failed to preserve the issue as her attorney failed to object to any perceived limitation on addressing Father's Emergency Motion. Finally, Father argues that Mother failed to demonstrate any prejudice resulting from the trial court's limitation of evidence as required by Maryland law.

B. Analysis

1. Preservation

As a preliminary matter, although this Court has the discretion to review an issue even though it was not raised below at the trial court, we decline to do so. We may only exercise this discretion if it is "necessary or desirable to guide the trial court or to avoid the expense and delay of another appeal." Md. Rule 8-131(a). Appellate courts should "rarely exercise" this discretion as:

> considerations of both fairness and judicial efficiency ordinarily require that all challenges that a party desires to make to a trial court's ruling, action, or conduct be presented in the first instance to the trial court so that (1) a proper record can be made with respect to the challenge, and (2) the other parties and the trial judge are given an opportunity to consider and respond to the challenge.

Chaney v. State, 397 Md. 460, 468 (2007). In this case, it is not necessary to address unpreserved issues to guide the trial court or to stave off the expense or delay of another appeal. As will be discussed below, even if Mother properly preserved her arguments, we would still rule for Father on the merits, so there is no risk of expense or delay of another

appeal. Therefore, we choose not to exercise this narrow discretion to rule on the merits of the unpreserved issues.

At both the March 5, 2021 and March 18, 2021 hearings, Mother failed to preserve the issues she now raises. Objecting to a trial court's ruling is generally a prerequisite to raising that issue on appeal. An appellate court will ordinarily not decide "any point or question which does not plainly appear by the record to have been tried and decided by the court below." *Basoff v. State*, 208 Md. 643, 650 (1956). Further, error by the trial court may not be predicated on the admission of evidence unless "the substance of the evidence was made known to the court by offer on the record or was apparent from the context within which the evidence was offered." Md. Rule 5-103(a)(2). A party need not make a formal objection in order to preserve an issue. However, a party must at least make known to the court "the action that the party desires the court to take." Md. Rule 2-517(c); *see also Caviness v. State*, 244 Md. 575, 578 (1966) ("Unless a defendant makes timely objections in the lower court *or makes his feelings known to that court*, he will be considered to have waived them and he can not *(sic)* now raise such objections on appeal.") (emphasis added).

Mother argues that at the March 5, 2021 hearing, the trial court erroneously excluded her testimony and that of "other available witnesses." Further, she argues, that "no other documentary evidence was permitted to even be proffered to the trial court." Yet, Mother's trial attorney failed to object to the exclusion of her testimony and failed to proffer the testimony of other witnesses. Mother argues that the trial court determined that "no further testimony by any witness and no further documentary evidence was needed." But the trial court allowed Mother to call a Montgomery County police officer and then to

proffer the testimony of Mother's sister. The record shows Mother's counsel did not call any additional witnesses or introduce any additional evidence. Therefore, Mother did not ask the court to take any of the actions of which she now complains. Thus, these issues are not preserved on appeal.

Mother also argues that the court erred by excluding testimony relating to L's head injury. But our review of the hearing transcript reveals that the trial court did, in fact, admit evidence of L's injuries. First, the trial court allowed testimony of the Montgomery County police officer who testified as to L's injuries and that Mother suspected Father had caused the injuries. Second, the trial court admitted multiple exhibits that related to L's injuries, including a "complete medical record," a "follow-up" from the hospital, and a photo of L's head, where the injury was allegedly located. At no point did Mother's attorney proffer additional evidence relating to domestic violence or L's injuries or object to the exclusion of evidence. Thus, this issue is similarly unpreserved.

Mother also argues that during the March 18, 2021 hearing, the trial court abused its discretion by limiting evidence solely to events that occurred after the March 5, 2021 domestic violence hearing. Mother asserts that the trial court "excluded all evidence . . . related to the protective order proceedings and the minor child's injuries inflicted by [Father]."

Again, Mother failed to preserve any of these arguments by failing to object at the hearing. When the trial court limited the scope of the hearing to issues that arose since the March 5, 2021 hearing, Mother's counsel did not object or otherwise complain to the court. Further, when Mother's counsel then attempted to broaden the scope of the evidence, the

trial court stopped her, restating that the evidence was to be limited to what transpired since they last met less than two weeks before. Upon hearing this, Mother's counsel said: "Okay, very good, [y]our honor, we'll stick to that." This clearly is not an objection nor an attempt to make Mother's disagreement known to the court and operates as waiver to raise the issue on appeal. *Caviness*, 244 Md. at 578.

Finally, Mother asserts that the trial court "improperly barred" her from addressing allegations in Father's Emergency Motion because she was not provided an opportunity to file a "response brief." Mother, however, fails to identify any rule or law that requires a party to have an opportunity to file a response before holding a hearing on an emergency motion. More importantly, the record reveals that the court gave Mother ample opportunities to address the allegations contained within Father's motion during the hearing. In fact, the court explicitly stated that it would like to "hear from [Mother] . . . to explain why she did not exchange [L] when she was supposed to"—the basis for Father's Emergency Motion—as well as to hear from Mother as to "why the [c]ourt shouldn't grant [Father's] motion." Mother testified and her attorney did not object or otherwise complain about being limited from addressing the allegations in Father's motion. Because the issue is not preserved, we decline to rule on the merits of these claims.

2. Prejudice

In her brief, Mother fails to demonstrate how the trial court's alleged errors in either of the hearings prejudiced her. Maryland Rule 5-103(a) provides that an error may not be based on a ruling that admits or excludes evidence "unless the party is prejudiced by the ruling." *See Crane v. Dunn*, 382 Md. 83, 91 (2004) ("The burden is on the appellant in all

cases to show prejudice as well as error.") (internal citation omitted). Mother fails to identify evidence at either of the hearings at issue that she was supposedly prohibited from offering. Nonetheless, she asserts that the prohibition of such evidence was an abuse of discretion, while failing to provide any substance as to why it was an abuse of discretion or why it prejudiced her. Without demonstrating any prejudice resulting from the alleged errors, Mother simply does not satisfy the requirement under Rule 5-103(a).

3. Abuse of Discretion

Even if Mother had preserved the issues she now raises, and even if she showed prejudice resulting from the alleged errors, we would still find that the trial court did not abuse its discretion. Trial courts have broad discretion when ruling on the admissibility of evidence. When ruling on the admissibility of evidence, an abuse of discretion occurs when "no reasonable person would share the view taken by the trial judge." *Brown v. Daniel Realty Co.*, 409 Md. 565, 601 (2009) (internal citation omitted). This is a high bar. As the Court of Appeals has stated:

> A ruling reviewed under the abuse of discretion standard will not be reversed simply because the appellate court would not have made the same ruling. The decision under consideration has to be well removed from any center mark imagined by the reviewing court and beyond the fringe of what the court deems minimally acceptable.

King v. State, 407 Md. 682, 697 (2009).

Notably, in her briefs, Mother provides no appellate authority that supports her claim that the trial court's actions constitute an abuse of discretion. Further, because Mother's counsel did not object to the exclusion of any evidence and failed to proffer additional evidence, we have no rulings to review for an abuse of discretion. Because

Mother's counsel failed to object or proffer, we are only able to review the express limitations made by the trial court on: (1) the limitation on witnesses in the March 5, 2021 hearing and (2) the limitation on the temporal scope of the March 18, 2021 hearing. We conclude that neither ruling is one in which no reasonable person would share the view taken by the trial judge, nor are the rulings "well removed from any center mark imagined by the reviewing court and beyond the fringe of what that court deems minimally acceptable." *North v. North*, 102 Md. App. 1, 14 (1994).

First, the trial court did not abuse its discretion in limiting the witnesses in the March 5, 2021 hearing. After Mother proffered the testimony of the Montgomery County police officer, the trial court stated: "I will hear from the officer . . . I will hear closing arguments." Ostensibly, this meant that the trial court was limiting further testimonial evidence, noting that the submitted evidence was sufficient because the outcome of the hearing rested primarily on the testimony of the parties, "an investigation by CPS" which the court had, and the testimony from the CPS worker who filed it. Further, the trial court also accepted the proffered testimony of Mother's sister—who also testified as to Mother's allegations—and additionally admitted numerous exhibits that Mother offered. It is therefore reasonable, and entirely within the trial court's discretion, to limit the number of witnesses as more witnesses would likely result in cumulative evidence that would not further assist the trial court in making its ultimate determination. *Holmes v. State*, 236 Md. App. 636, 674 (2018) ("A court may reasonably exercise its discretion to exclude cumulative evidence. *See* Md. Rule 5–403.").

Second, it was not an abuse of discretion when the trial court limited the temporal scope of the March 18, 2021 hearing. The judge was intimately aware of the entire history of the case. As a "One Family, One Judge" case, Judge Burrell has presided at hearings with these same parties from the first of their many filings; the court was well-aware of the allegations and the dynamics of the situation. And because of the litigious nature of the parties, there were frequent court dates—many of which seem, from our review of the entire record, to have been a means to re-litigate identical issues on multiple occasions. Having just convened a protective order hearing with the parties on March 5, 2021, it was well within the trial court's discretion to limit the scope of the March 18, 2021 to hear only issues raised after the March 5 hearing. The circuit court thus did not abuse its discretion in this regard.

II. DENIAL OF A FINAL PROTECTIVE ORDER

A. The Parties' Contentions

While our analysis so far has addressed questions that Mother raises with respect to both the March 5 and March 18, 2021 hearings, she separately challenges the court's ultimate denial of the protective order at the March 5 hearing. Mother contends that the circuit judge improperly relied on the CPS report and the social worker's testimony as the basis for the court's denial. Furthermore, she claims that "[t]he court ignored the testimony of [the Montgomery County officer] and failed to actually consider the documentary evidence" of her exhibits. She concludes her argument by asserting that there "was no legal or factual basis" for the court's ruling. Inexplicably, in her entire written argument

in her brief, Mother cites no case law, statute, or any other authority whatsoever to support her assertion that the court erred in denying her a protective order.

Father, meanwhile, relies on *Mercedes-Benz of N. Am. v. Garten*, 94 Md. App. 547, 556 (1993) and *Byrd v. State*, 13 Md. App. 288, 295 (1971) *cert. denied*, 264 Md. 746 (1972) to support his argument that the court correctly denied Mother's requested protective order. Father urges us to assume the truth of the admitted evidence as well as any favorable inferences from such evidence that supports the trial court's factual conclusions. *See Mercedes-Benz of N. Am.*, 94 Md. App. at 556. Father emphasizes that "the weight of the evidence and the credibility of witnesses is a matter for the determination of the trial judge and will not be disturbed on appeal unless clearly erroneous." *See Byrd*, 13 Md. App. at 295. After detailing the testimony that the social worker and police officer gave at the hearing, Father argues that the trial judge properly relied upon this evidence in making her findings. Finally, Father notes that in addition to reliance on the witness' testimony, the trial court properly reviewed the exhibits and concluded that there was insufficient evidence to find that Father had abused L.

B. Analysis

At the outset, we disagree with Mother's argument that the trial court "ignored the testimony of [the police officer], and failed to actually consider the documentary evidence[.]" Because Mother does not elaborate on this point, we are unsure why she claims that the trial court did not consider testimony and evidence when the transcript conclusively shows that the court did in fact consider the very evidence that she claims it did not. First, the court heard testimony from the police officer that spanned seventeen

pages of the transcript. Throughout our review of the officer's testimony, there was nothing that would suggest that the trial judge was not paying attention to the evidence. To the contrary, the trial judge's appropriate and prompt resolution of objections from both parties' attorneys indicate the contrary.

Second, when she made her findings, the trial judge specifically noted the officer's testimony: "As the police officer testified, [L] was happy and playing and giggling when he was talking to the police officer." Third, the trial court considered documentary evidence that Mother claims the trial court "failed to actually consider." For example, the judge noted that,

> [t]he photos that have been admitted into evidence do not establish that the bumps on [L]'s head were caused by his father. There are many reasons why a child could get bumps on his head, and it doesn't necessarily mean there was abuse. Further, you can barely see the injury on the child's head [in the admitted photographs].

Finally, the judge clearly stated her finding that there were "no reasonable grounds to believe that [Father] abused [L] . . . [b]ased on all the evidence presented[.]"

Given that the trial court expressly considered the testimony and documents which Mother argues the trial court did not consider, and given that Mother does not explain why she believes the trial court did not consider such evidence, we cannot conclude that the trial court "ignored the testimony of [the officer] and failed to actually consider the documentary evidence[.]"

We also reject Mother's contention that the trial court improperly relied on the social worker's testimony, when she argues that the circuit court's ruling was without "legal or factual basis." We see nothing improper in the court relying, in part, on the social worker's

testimony in reaching its decision. The social worker testified that he had observed a forensic interview of L on March 1, 2021. He furthermore testified that L had shared a "vague allegation" of child abuse, but that CPS normally "expect[s] more details to have a clinical, credible disclosure" in cases in which they believe abuse actually occurred. The social worker also opined that it was his impression that L was trying to appease Mother by making an allegation of abuse against Father. Moreover, although Mother now complains that the social worker "was never qualified as an expert [witness,]" the hearing transcript shows the trial court agreed with Mother and did not allow the social worker to testify as an expert witness:

> [FATHER'S COUNSEL]: Okay. In your professional opinion, was there any indication of coaching?
>
> [MOTHER'S COUNSEL]: Objection. He's not an expert.
>
> THE COURT: Sustained.
>
> [MOTHER'S COUNSEL]: We haven't --
>
> THE COURT: Sustained.

Again, Mother does not specify, beyond a bald assertion, that "the trial court improperly relied on [the social worker]'s testimony" and that the court had "no legal or factual basis for its ruling[,]" how such reliance or ruling was in error. Put simply, "appellate courts cannot be expected to either (1) search the record on appeal for facts that appear to support a party's position, or (2) search for the law that is applicable to the issue presented." *Ruffin Hotel Corp. of Maryland v. Gasper*, 418 Md. 594, 618, 690 (2011) (citing *State Roads Comm'n v. Halle*, 228 Md. 24, 32 (1962) ("Surely, it is not incumbent

upon this Court, merely because a point is mentioned as being objectionable at some point in a party's brief, to scan the entire record and ascertain if there be any ground, or grounds, to sustain the objectionable feature suggested.")).

Presented with no evidence of how the trial court improperly relied on the social worker's testimony or came to its conclusion without a factual or legal basis, we disagree with Mother's assertion that the court erred in denying the final protective order. Indeed, the circuit court appropriately relied on documentary and testimonial evidence, including the testimony of the social worker. "The weight of the evidence and the credibility of witnesses is a matter for the determination of the trial judge[.]" *Byrd*, 13 Md. App. at 295. There is no basis for us to conclude that the trial judge did not weigh and determine the credibility of the social worker, the police officer, and review the documentary evidence. Accordingly, we affirm the circuit court's ruling.

III. MENTAL HEALTH EVALUATION

A. The Parties' Contentions

Mother's final issue concerns the March 18, 2021 hearing. Mother argues that the trial court erred by ordering her to submit to a mental health evaluation "without any presentation of evidence." In support of her argument, she cites to the federal Health Insurance Portability and Accountability Act ("HIPAA") and the Maryland Confidentiality of Medical Records Act, stating that "it is well established that a party's medical records including mental health records are protected from disclosure under federal law." Mother also believes that she is protected under section 9-109 of Courts and Judicial Procedure ("C.J.") of the Maryland Annotated Code, which protects "all communications between

patient and psychiatrist or psychologist." Mother further argues that none of the evidence presented during the March 18, 2021 hearing "related to the mental health of either" her or Father, and thus "the trial court was incorrect when it ordered a mental health evaluation" of her.

Father argues that the laws cited by Mother are inapplicable. First, he argues that HIPAA and the Maryland Confidentiality of Medical Records Act only govern when "health care providers and mental healthcare providers can or cannot disclose their patients' health records," and thus those statutes do not apply when a trial court orders a mental health evaluation. Instead, Father asserts that Maryland Rule 2-423 allows the trial court to order a party to submit to a mental or physical examination when those conditions and characteristics are at issue.

Father further argues that C.J. § 9-109 does not provide absolute protection, and that the Court of Appeals has stated that "exceptional circumstances in domestic cases may necessitate access to a party's counseling and treatment records." Father argues that Mother's behavior constitutes exceptional circumstances and provides "good cause to order that [Mother] submit to a mental health evaluation."

A. Analysis

A trial court has the discretion to order a party to undergo a physical or mental examination, and we will not disturb such an order unless the trial court abused its discretion. *Brown v. Hutzler Bros. Co.*, 152 Md. 39, 46 (1927).

We begin by dispensing with Mother's reliance on HIPAA and the Maryland Confidentiality of Medical Records Act. HIPAA regulations expressly state that the

privacy requirements under the statute apply to health plans, health care clearinghouses, and health care providers. 45 C.F.R. § 160.102 (2021). Similarly, the Maryland Confidentiality of Medical Records Act specifically applies to disclosure of private medical records "by health care providers." *St. Luke Inst., Inc. v. Jones*, 471 Md. 312, 333 (2020). It goes without saying, despite Mother's misplaced reliance on these statutes, that the Circuit Court for Montgomery County is not a health plan, health care clearinghouse, or health care provider. Accordingly, neither HIPAA nor the Maryland Confidentiality of Medical Records Act applies to the circuit court's order for Mother to undergo a mental health evaluation.

In further support of her argument, Mother cites two cases. The first, *Jaffee v. Redmond*, is a U.S. Supreme Court case that set out the psychotherapist-patient privilege under the Federal Rules of Evidence. 518 U.S. 1, 15 (1996). However, the Federal Rules of Evidence do not apply in Maryland courts and thus do not negate a trial court's ability to order a mental health evaluation under Maryland Rule 2-423. The second case, from the Maryland Court of Appeals, is similarly inapplicable, as that case dealt with the disclosure of medical records by a hospital and not an independent examination ordered by a court. *Warner v. Lerner*, 348 Md. 733, 742 (1998).

Finally, Mother cites C.J. § 9-109. Section 9-109 provides for the privilege to refuse to disclose communications between a patient and a licensed psychologist or psychiatrist. Specifically, Mother argues that the HIPAA and Maryland Confidentiality of Medical Records Act "protections include all communications between patient and psychiatrist or

psychologist (see Courts and Judicial Proceedings of the Ann. Code of Maryland § 9-109 *et seq.*)."

Again, here, Mother misses the mark with respect to the relevance of her cited statute. While C.J. § 9-109 concerns communications between patients and psychologists or psychiatrists, here, there is no communication between Mother and any psychiatrist or psychologist that is at issue or even known to exist. Instead, the issue here is straightforwardly whether the court erred in ordering Mother to complete a mental health evaluation—not whether any privileged communication between Mother and a psychiatrist or psychologist should be admitted to the court. Furthermore, the Court of Appeals spells out that while communications between a patient and a psychiatrist or psychologist may be protected by privilege even in child custody cases, "the question of whether an independent evaluation is necessary is discretionary with a trial court." *Laznovsky v. Laznovsky*, 357 Md. 586, 621 (2000). This makes clear that while a party may raise the psychiatrist/psychologist communications privilege, such privilege in no way hinders a court's ability to order a party to undergo an independent mental health evaluation.

While Mother bases her arguments on HIPAA, the Maryland Confidentiality of Medical Records Act, and C.J. § 9-109, we find Maryland Rule 2-423 to be far more instructive. Although Mother does not cite it, Maryland Rule 2-423 provides that:

> When the mental or physical condition or characteristic of a party or of a person in the custody or under the legal control of a party is in controversy, the court may order the party to submit to a mental or physical examination by a suitably licensed or certified examiner or to produce for examination the person in the custody or under the legal control of the party.

Given Mother's actions regarding L, as we described in the factual background section of this opinion, Mother's mental health and her ability to appropriately care for L was in controversy. Although at oral argument her counsel suggested that because Mother was a survivor of domestic violence, the evaluation was intrusive, Mother's discomfort is not the issue, but rather, what, ultimately, was in L's best interests. Consequently, in trying to reach that determination, the circuit court did not abuse its discretion in ordering the mental health evaluation.

In sum, Mother's cited authority is wholly unpersuasive. Accordingly, finding no error, we affirm.

THE JUDGMENT OF THE CIRCUIT COURT FOR MONTGOMERY COUNTY IS AFFIRMED. APPELLANT TO PAY THE COSTS.