

Circuit Court for Wicomico County
Case No. C-22-FM-19-807476

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 120

September Term, 2019

BRITTNEY HUGHES

v.

CYNTHIA CEPHAS

Friedman,
Gould,
Battaglia, Lynne A.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Friedman, J.

Filed: January 21, 2020

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. MD. RULE 1-104.

Brittney Hughes appeals the Circuit Court for Wicomico County’s grant of a final protective order against her, requested by Cynthia Cephas, on behalf of Hughes’s four-year-old daughter, K.W. We affirm.

BACKGROUND

The underlying facts at issue in this appeal concern Hughes’s application of cream to her daughter’s vagina. Cephas, K.W.’s paternal grandmother, was granted a temporary protective order against Hughes based on allegations of sexual child abuse and a final protective order hearing was held on March 7, 2019.

At the final protective order hearing, the trial court heard testimony from Cephas, as well as Hughes’s aunt, who was with Hughes and K.W. at the time of the incident. The trial court also received a report from the Wicomico County Department of Social Services.¹ Upon reviewing the evidence, the trial court found the following: (1) that cream

¹ The Department of Social Services report was admitted—over Hughes’s objection—under a relatively new hearsay exception that applies only to reports produced by local departments at final protective order hearings. MD. RULE 5-803(b)(8)(A)(iv). This provision provides that in a final protective order hearing, a report made by a local department setting forth factual findings can be reported to the court, provided that the parties have had a fair opportunity to review it. *Id.* Moreover, the report is deemed reliable unless its preparation or circumstances surrounding its preparation indicate that the record or information contained therein lacks trustworthiness. MD. RULE 5-803(b)(8)(B). Hughes argues that the report is inadmissible because it did not contain any “factual findings” but only “opinions and arguments of the local department.” We agree with Hughes’s legal analysis that only factual findings are admissible and that opinions must be excluded. MD. RULE 5-803(b)(8)(A)(iv); *see also Ellsworth v. Sherne Lingerie, Inc.*, 303 Md. 581, 609 (1985) (interpreting the phrase “factual findings” as it appears in MD. RULE 5-803(b)(8)(A)(iii)). Here, however, we are confident that the trial court was aware of this distinction and did not abuse its discretion in applying it to the report. *See State v. Chaney*, 375 Md. 168, 179 (2003) (noting that trial judges are “presumed to know the law and apply it properly”). Moreover, our independent review confirms that the report contained summaries of interviews with Cephas and K.W., which are factual findings, not opinions

was applied to K.W.’s vagina; (2) that Hughes applied the cream; and (3) that the cream was applied for “no discernable medical or health reason.” The trial court stated that the “reasonable inference” is that Hughes, in applying the cream, molested, or exploited K.W. Accordingly, the circuit court granted a final protective order against Hughes, effective until March 7, 2020. Hughes appeals, challenging the sufficiency of the evidence.

DISCUSSION

Hughes challenges the sufficiency of the evidence to sustain the circuit court’s finding that the application of cream to K.W.’s vagina constituted sexual abuse of a child. Specifically, Hughes contends that the “single instance”² of applying cream to K.W.’s vagina is not sufficient evidence of sexual exploitation or molestation absent evidence that the cream was “applied in a sexual manner or for the selfish benefit” of Hughes.

Child abuse under Section 5-701 of the Family Law Article of the Maryland Code includes “sexual abuse of a child, whether physical injuries are sustained or not.” MD. CODE, Family Law (“FL”) § 5-701(b)(1)(ii). Sexual abuse is further defined as “any act that involves sexual molestation or exploitation of a child by a parent.” FL § 5-701(y)(1)(i). The act does not need to be “criminal” to constitute sexual abuse. *Walker v. State*, 432 Md. 587, 622 (2013). Rather, exploitation includes acts by which the “parent ... of a child took

or evaluations. We also note that, even if we were to agree with Hughes that the report was inadmissible (which we do not), any error was harmless because there was more than sufficient evidence in the form of witness testimony to sustain the issuance of a final protective order. *See infra*.

² We disagree with Hughes’s contention that there is (or should be) a distinction between a single instance and multiple instances of child abuse. It should go without saying that one instance of child abuse is sufficient to file for a protective order.

advantage of or unjustly and improperly used the child for his or her own benefit.” *Brackins v. State*, 84 Md. App. 157, 162 (1990).

Where there is suspicion of abuse of a child by a parent, the party seeking a final protective order must show “by a preponderance of the evidence that the alleged abuse has occurred.” FL § 4-506(c)(1)(ii). Because “intent is subjective, and without the cooperation of the accused, cannot be directly and objectively proven, its presence must be shown by established facts which permit a proper inference of its existence.” *Bible v. State*, 411 Md. 138, 157 (2009) (quoting *State v. Smith*, 374 Md. 527, 536 (2003)). In reviewing the grant of a final protective order, we defer to the hearing court’s assessment of the credibility of witnesses and accept the facts as they are found by the court, unless those findings are clearly erroneous. *Barton v. Hirshberg*, 137 Md. App. 1, 21 (2001). We apply the law to those facts without deference, however, and make our own independent appraisal of the court’s ultimate conclusion. *Piper v. Layman*, 125 Md. App. 745, 754 (1999).

We conclude that the circuit court’s issuance of a final protective order against Hughes was not clearly erroneous because there was sufficient evidence presented at the final protective order hearing for the court to find that Hughes abused K.W. in a manner that was sexually exploitative. *First*, there is no dispute that there was cream on K.W.’s vagina. *Second*, the circuit court found that Hughes was the person who applied the cream to K.W.’s vagina. Although Cephias testified that Hughes denied applying cream to K.W.’s vagina, K.W. reported to Cephias that Hughes applied the cream. Moreover, Hughes’s aunt testified that Hughes did, in fact, apply cream to K.W.’s vagina, but only because K.W.

was constipated.³ And, *third*, the circuit court found that there was “no discernable medical or health reason” for Hughes to have applied the cream to K.W.’s vagina. In the absence of a medical or health reason, the circuit court inferred that Hughes’s intent was to sexually exploit or molest K.W.

We see nothing clearly erroneous in the circuit court’s finding that Hughes sexually abused K.W. in applying the cream to her vagina. We, therefore, affirm the circuit court’s grant of the final protective order against Hughes.

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

³ The circuit court determined that Cephas was credible and Hughes’s aunt was not, and we must defer to this determination. *See Ricker v. Ricker*, 114 Md. App. 583, 592 (1997) (“The determination of credibility is a matter left entirely to the trial judge.”).