Circuit Court for Prince George's
Case No. CADV22-00008

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 218

September Term, 2022

N.H.

v.

P. S.

Beachley,
Shaw,
Wilner, Alan M.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Wilner, J.

Filed: September 9, 2022

The parties to this appeal are the unmarried parents of a child who was born in June 2021 and was six months old at the time the events that led to this case occurred. The parents are not living together.[1] Appellant, the child's mother, is living, with the child, in the District of Columbia; appellee, the child's father, is living in Prince George's County. No formal custody or visitation order had been entered when the fracas that triggered this case occurred. It appears that appellant also has a daughter and appellee has other children, but none of those children are involved in this case.

BACKGROUND

Appellant, a teacher in the District of Columbia school system, relied on her mother to watch the child while she was at work. The grandmother became unavailable on January 10, 2022, however, because of her exposure to the COVID-19 virus and, unable to find a replacement among her relatives, appellant dropped the child off at appellee's home in Oxon Hill for the day. When she returned later, at the end of her workday, appellee refused to return the child, or respond to appellant's avalanche of telephone calls and text messages or disclose the child's location. Concerned, at least in part because she was breastfeeding the child at night, she asked the police to do a "welfare check" on the child, but appellee refused to allow the police to see the child.

[1] Although this is an Unreported Opinion, to protect the privacy of the child, we shall refer to him as "the child" and not by name.

The next day – January 11 – appellant sought relief in Maryland but was directed to file in the District of Columbia, which, as noted, is where she and the child lived. She then filed a petition for emergency relief in the District of Columbia Superior Court, in response to which that court entered an emergency order granting her temporary sole legal and physical custody and directed appellee to return the child immediately, which he did the next day.

Appellee filed, in Prince George's County, three actions against appellant that have complicated what is now before us.

One action, filed January 12, 2022 in the Circuit Court, was a domestic violence petition against appellant claiming that she had threatened him through repeated telephone calls and text messages. The court entered a standard Temporary Protective Order directing appellant not to abuse or threaten to abuse appellee, contact or attempt to contact or harass him, and not to enter his residence.

The other two actions were criminal cases filed in the District Court. The first of those actions (No. 3E0078351) was filed on January 14, 2022, charging appellant with trespass to private property in violation of Code, Criminal Law Article § 6-403 and opening letters without permission in violation of Code, Criminal Law Article §3-905, both on January 10, 2022. The Judicial website reveals that that criminal action was rendered inactive by a stet on March 21, 2022.

The second criminal action (No. E007100113) was filed on January 19, 2022. It alleged unlawful stalking of appellant on December 5, 2020 in violation of Code

Criminal Law Art. §3-802(c), obscene telephone misuse on December 5, 2020 in violation of Code, Criminal Law Art. §3-804(a)(3); harassment in violation of Code, Criminal Law Art. § 3-803 on December 5, 2020; and trespass on private property on January 10, 2022 in violation of Code, Criminal Law Art. §6-403. The Court has been informed that that case was set for trial on August 30, 2022 and was nol prossed on that date.

The Temporary Protective Order extended to January 18, 2022, when an evidentiary hearing was held before Judge Wytonja Curry on a Final Protective Order. It is apparent from the transcript of that hearing that it was held remotely.[2] Neither party was represented by an attorney in that proceeding.

During the hearing, appellee described appellant as very unstable, calling him and sending text messages all through the night and in the morning, showing up at his home unannounced, threatening him, and sending him sexually explicit photographs of herself despite his requests to stop that activity. He said that he did not feel safe – "she needs to stay away from me . . . phone calls, harassments . . . it's just becoming too much over a year-and-some-change term . . . Sexual explicit pictures after me telling her not to send me any of this stuff. We're talking over a year ago, Please don't send me no text

[2] At the outset, Judge Curry informed appellee that she could not hear him and asked that he "turn up your volume or connect your audio" and, when that did not help, to "disconnect and try to log back in." The court also asked appellant to "unmute" in order to take the oath administered to witnesses. Later, after an interruption discussed below, the transcript states that the proceeding continued by "Zoom."

message. Please don't send me no nude pictures. We're not having no dealings." In response to the Court's question of whether this was "an ongoing issue," he said "Ongoing. I have it all. I have proof all the way back from 2020."

About halfway through the hearing, appellant announced that "the sheriff is here. Can you give me a break right quick?" The Court agreed, whereupon, according to the transcript, "a pause in the proceedings occurred; thereafter proceedings resumed via Zoom." The next entry in the transcript is appellant announcing "Okay. I'm done."

Appellant claimed that sexual relations between her and appellee ended in May, that they had interacted cordially since then, and that she had not sent any nude photos since then.

After listening to the accusations and denials, the court found that appellee was a person eligible for relief and that there was a preponderance of evidence of stalking on appellant's part based on her continuing to contact appellee not in relation to the child and continuing to send him photos despite his request that she refrain from doing so. The court stated that it would order her (1) not to abuse or threaten to abuse appellee, (2) not to contact or attempt to contact or harass him by any means except to facilitate any visitation, (3) not to enter his residence except to exchange the child, and (4) not to visit his place of employment. The court added that the custody arrangements would remain as directed by the District of Columbia court and that it was not making any finding that there was evidence of appellant being a danger to the child. Those rulings were incorporated in a Final Protective Order signed the same day.

The docket entries regarding that Order are, to say the least, confusing. The first entry for January 18, 2022 is "Prot Order Dom Viol Held." The second entry for that date is "Case Disp: Petition Granted 63OHC Judge Curry; Ms. Blyden, Reporter." That is followed by a separate entry, also dated January 18, 2022, stating "DV Final Protective Order fd." That is followed by an entry on January 21, 2022, stating "d/s. dated 01-18-2022, Judge Wytonja Curry. Hearing on Final Protective Order. Judge Curry, Ms. Blyden, reporter, Witness List filed. Petition- Granted. Order signed and attached."

On January 28 – ten days after the Order was signed – appellant filed a Motion for New Trial pursuant to Rule 2-533 in which she complained (1) about the interruptions of the January 18 hearing by the sheriff serving her with a criminal summons, (2) that she had consulted an attorney on January 17 but was unable to retain him because he had a conflict for the 18th, (3) that she was unaware that she could request a postponement, and (4) she was unable to present evidence because of her inability to provide exhibits on her telephone to appellee. That motion was prepared by an attorney. The court denied the motion the day it was filed. That Order, however, was not docketed until March 4, 2022.

The most recent event in this saga was a Modified Temporary Custody Order by Consent entered by the Superior Court of the District of Columbia on May 6, 2022. As noted, that court had entered an emergency order on January 11, 2022, awarding appellant sole legal and physical custody of the child. In the May 6 consent order, the court ordered that appellant would continue to have temporary sole legal and physical

custody but awarded appellee weekly supervised visitation from 8:00 a.m. to 3:00 p.m. on Tuesdays and Thursdays.

THE APPEAL

Appellant filed this appeal *pro se* on March 31, 2022 and elected to file an informal brief pursuant to Rule 8-502(a)(9). She said that her appeal is from the Final Protective Order entered on January 18, 2022 and from the denial of her Motion for New Trial on January 28, 2022, and she raises five issues. Neither party is represented by an attorney in the appeal.

Timeliness

Before getting into appellant's substantive issues, we need to address the timeliness of her appeal. Rule 8-202(a) states the general requirement that a notice of appeal be filed within 30 days after entry of the judgment or order from which the appeal was taken. Section (c) of the Rule deals with the situation we have here – a civil action where a timely motion seeking a new trial under Rule 2-533 was filed. In that situation, the appeal must be filed within 30 days after entry of an order denying the motion. As we indicated, the motion filed by appellant was actually denied on January 28, 2022 – the same day the motion was filed – but the denial of the motion was not docketed until March 4, 2022. As the appeal was noted on March 31, it was within 30 days after the effective denial of the motion, and therefore is timely.

THE ISSUES

In her informal brief, appellant raises five issues, as follows:

FIRST: appellant says, "I never stalked appelle[e] with text messages or calls not in relation to our child MD 3-803 has exceptions." In support of that claim, she states that, under Maryland law, "stalking to adhere to a court order for compliance is not stalking." She contends that what appellee showed in court was that the repeated calls occurred on January 12, 2022, which is when she was attempting to retrieve the child from appellee, who was refusing to comply with the temporary custody order entered by the D.C court, which was both mailed to and handed to appellee. She disputes the court's finding in its Final Protective Order that she continued to contact appellee not in relation to the child and that she sent to him pictures not relating to the child.

SECOND: she contends that "I never stalked the appellee with sending pictures not in relation to our child." Her explanation is somewhat difficult to understand. She admits having said at the January 18 hearing that she and appellee had agreed "a couple of months" after the child was born not to continue having sex but meant to say "several" rather than "a couple." The court treated that agreement as having been made in May, but appellant said that she made no such agreement in May and, at the time she sent the nude picture of herself to appellee she believed that they *were* going to continue having sex because it was more than six weeks since the child was born.

ISSUE 3 deals with the denial of appellant's Motion for New Trial. She claims that the interruptions of the January 18 hearing by the sheriff were humiliating and disrespectful to both her and her son, led to the judge misinterpreting what she had said, and violated her right to due process.

As relief, appellant wants this Court to rescind the protective order, terminate the criminal charges against her, and request the prosecutor to dismiss those charges.

ISSUE 4 complains that appellee failed to produce a witness list, claiming that he was unaware that he could call witnesses. She says the multiple texts and calls were related to her attempts to retrieve the child.

ISSUE 5 complains that the judge allowed appellee to show appellant's "private parts" on a "text message chain." At the time the pictures were sent, she says she believed that she and appellee would be resuming sexual relations because her post-pregnancy waiting period had expired, but the judge regarded that as evidence of stalking. Those pictures, she says, should not have been admitted.

RELIEF REQUESTED

In the "Relief Requested" section of her informal brief, appellant asked that this Court (1) rescind the protective order that was granted in case CADV22-00008, (2) terminate the charges in Criminal Cases 0E00708351 and 3E00710013, and (3) ask the prosecutor in both cases to dismiss the charges.

RESPONSE

General -- Credibility

Much of the evidence that led the trial court to extend the Temporary Protective Order it had issued and the custody/visitation orders entered by the District of Columbia court was in dispute and depended on credibility determinations. As the Court of Appeals recently confirmed, however, "[b]ecause the fact-finder possesses the unique opportunity to view the evidence and to observe first-hand the demeanor and to assess the credibility of witnesses during their live testimony, we do not weigh the credibility of witnesses or attempt to resolve any conflicts in the evidence." *Harris v. State*, 479 Md. 84, 112 (2022), quoting from *Smith v. State*, 415 Md. 174, 185 (2010).

The trial court listened to the testimony of appellant and appellee, offered them ample time to present their evidence, weighed that evidence, and found appellee's explanations more credible. We shall not disturb that determination.

Criminal Charges

Two sets of criminal charges were filed against appellant (Case No.0E00708351 charging trespass on private property and opening letters and Case No. 3E00710013 charging stalking, telephone misuse, harassment, and trespass). The record indicates that the first set became inactive by virtue of a stet on March 21, 2022 without any penalty. The second was nol prossed on August 30, 2022. As appellant is no longer facing any active criminal charges, that issue is moot. We are dealing here only with an extension of a civil domestic violence protective order.

The Visits of the Sheriff

In her Motion for New Trial, appellant noted, as a matter of neutral fact, that, during the January 18 hearing, an officer of the sheriff's office appeared at her home twice, apparently (although this is not entirely clear) to serve her with a criminal summons based on the same behavior complained of in the protective order case. In the next paragraph, she said that she had a right under the Federal and Maryland Constitutions not to testify, but, although she had completed her direct examination before the sheriff arrived, she continued to testify on cross-examination after the sheriff had left and did not ask the court to strike what she previously had said, other than a possibly incorrect date on which she and appellee last had sex, to which the court said, "All right."

Appellant complains about the unexpected visits from the sheriff. As we indicated, we are relying solely on what appears in the January 18 transcript regarding that visit, which, in a classic understatement, is scant. The transcript does not reveal what the sheriff said or did, or appellant's reaction to his visits.

All that is revealed in the transcript is that appellant announced, out of the blue, that "the Sheriff is here. Can you give me a break right quick?" to which the Court agreed "Yeah, that's fine. Go ahead," whereupon "a pause in the proceedings occurred; thereafter, proceedings resumed via Zoom." After the break, appellant simply said, "Okay. I'm done." There is no further reference to the sheriff in the transcript.

Appellant complains that the appearance of the sheriff during the January 18 hearing to serve papers on her was so humiliating and disruptive as to require rescission of the protective order and a dismissal of the criminal charges. We disagree.

Whatever papers were served on appellant at that time were not in the record transmitted to this Court, although there is a reference to them as involving criminal charges against appellant. A separate criminal complaint was filed by appellee in the District Court against the appellant on January 19, 2022 – the day after the Final Protective Order hearing – and she was served with that on January 24, 2022. That complaint does not appear to be what appellant is complaining about in this case although it alleges similar behavior. There is nothing in the record to support her subsequent complaint about being flummoxed by the sheriff's appearance during the January 18, 2022 hearing.

Appellant claims in her Issue 4 that appellee's failure to produce a witness list made it difficult for her to retrieve her child. She does not offer a reason why that is so. Appellee did not call any witnesses, and she did, in fact, retrieve her child on January 12 pursuant to the Temporary Protective Order.

For the reasons noted, we affirm the initial decision of the circuit court on January 18 and its subsequent decision denying appellant's Motion for a New Trial.

POSTSCRIPT

Appellant proceeded without an attorney throughout this case, which is unfortunate. She waited until the day before the hearing to seek counsel and claims that she was unaware that she could ask for a postponement. Our Court has attempted to explain clearly the informal briefing procedures to assist self-represented litigants at the appellate level, but there are some situations in which the assistance of an attorney, at both the trial and appellate level, can be critical, and this appears to be one of them. If there is any consolation to appellant, it is that she has, so far, retained primary custody of her child and has simply been enjoined from doing what the law does not permit her to do anyway.

JUDGMENT OF THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY IS AFFIRMED. COSTS TO BE PAID BY APPELLANT.