

Circuit Court for Baltimore County  
Case No. C-03-FM-21-808464

UNREPORTED  
IN THE COURT OF SPECIAL APPEALS  
OF MARYLAND

No. 520

September Term, 2021

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THEOPHILUS NARTEY

v.

VERA NARTEY

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Graeff,  
Friedman,  
Eyler, Deborah S.,  
Senior Judge, Specially Assigned,  
JJ.

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Opinion by Eyler, Deborah, S., J.

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Filed: January 10, 2022

\*This is an unreported opinion and therefore may not be cited either as precedent or as persuasive authority in any paper, brief, motion, or other document filed in this Court or any other Maryland court. Md. Rule 1-104.

In the Circuit Court for Baltimore County, Vera Narthey (“Mother”), the appellee, filed a petition for protection from child abuse. Following a hearing, the court entered a final protective order prohibiting Theophilus Narthey (“Father”), the appellant, from contacting, threatening, or abusing his three children with Mother and awarding custody of them to Mother. Father appeals, contending that the circuit court erred by crediting the testimony of Mother and the parties’ oldest child and by admitting an exhibit he asserts is fraudulent.<sup>1</sup> Perceiving no error, we shall affirm the circuit court’s order.

### **FACTS AND PROCEEDINGS**

Father and Mother are the married but separated parents of three children. At the time of the final protective order hearing, their daughter E was 18, their daughter L was 14, and their son I was 12. Under the terms of a *pendente lite* order in a then-pending contested child custody case, the children lived with Father at his two-bedroom apartment in Towson and visited with Mother in her home in Randallstown on Mondays and Thursdays, from 4 p.m. until 8 p.m., and every other weekend.

On April 30, 2021, in the Circuit Court for Baltimore County, Mother filed a petition for protection from child abuse. She alleged that Father was physically and verbally abusing the children and denying them food. Following an *ex parte* hearing that day, the court entered a temporary protective order granting Mother temporary custody of

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<sup>1</sup> Mother did not file a brief in this Court.

the children and ordering Father not to abuse or threaten to abuse Mother or the children and to stay away from them, their schools, and their workplaces.

Consistent with Md. Code (2019 Repl. Vol.), section 4-505(e) of the Family Law Article (“FL”), the circuit court referred the matter to the Baltimore County Department of Social Services (“BCDSS”) for it to investigate the allegations of the petition and to file a report with the court. On May 6, 2021, BCDSS filed its report with the court recounting the history of the family’s involvement with BCDSS and the substance of interviews with Mother, Father, and the children.<sup>2</sup> L described Father as “verbally and physically aggressive” and said she had witnessed him push I to the floor. She also reported that Father had been physically aggressive with her and she did not wish to have further contact with him “because he is violent.” E described Father choking her and taking her phone when she wanted to visit Mother. E stated that she only stayed with Father to protect her siblings. I reported that he did not feel safe in Father’s care and that he was “consistently threatened” by him. He said that Father “routinely yells, screams, and fights the children.” I did not wish to return to Father’s care. Father denied the allegations of abuse, which he characterized as “ridiculous,” telling the social worker that “the children are hearing voices and the voices are telling them to say these things.”

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<sup>2</sup> The report erroneously states that the social worker interviewed the parties and their children on March 6, 2021. The interviews were conducted at some point between April 30, 2021 and May 6, 2021.

The court held the final protective order hearing on May 7, 2021. Mother appeared with counsel and Father represented himself. Mother testified that recently when she would pick the children up for the court-ordered visitation, she noticed that their clothes were dirty, their hair was unkempt, they had lost weight, and they appeared “malnourished.” The children told her that Father was not giving them anything to eat. They also were unusually quiet and “timid.”

On April 22, 2021, Mother saw E for the first time in eight months.<sup>3</sup> E told Mother she wanted to come and stay with her and Mother agreed. E then changed her mind, telling Mother she feared for L and I if she left them alone with Father.

On Thursday, April 29, 2021, when Mother was returning the children to Father’s custody following her visit with them, they began to “scream” and say they did not want to go back. E said Father would not allow her to see Mother. L told Mother that if she returned them to Father’s care, she would “see [them] in the news.”

The next morning, Mother filed her petition, attaching a printout of an instant message exchange on WhatsApp<sup>4</sup> between her and E. That printout was admitted in evidence as Exhibit 1, over objection, at the final protective order hearing. Mother testified that she messaged E on the morning of April 30, 2021, and asked her to tell her “exactly what is going on in the house” because she needed to include the specific

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<sup>3</sup> E had stopped coming on visits and when Mother asked Father about it, he responded that because E was 18, it was her decision.

<sup>4</sup> WhatsApp is an instant messaging application.

allegations in her petition for protection from abuse. She printed out the responses she received, which E later clarified in her testimony were typed by L, not E.

In Exhibit 1, L stated that between February and April, 2021, Father: 1) pushed I onto the floor in the hallway outside the apartment, 2) choked E because she wanted to visit Mother, 3) pushed a “hard metal door” on L because she asked to bring E with them on a visit, 4) “pressed his hand and hard boots on [I’s] neck[,]” 5) threatened I by making a gesture like he was pointing a gun at him, 6) did not buy them food, 7) woke them up every day between 3 and 4 a.m. to “verbally abuse” them, 8) locked I outside in freezing conditions and left him “to pee on himself[,]” 9) punched I in his “spinal cord until he went blackout[,]” 10) hit E in the head, causing it to ache for weeks, 11) started a fire on the deck, 12) used something to scratch I’s eyeball, and 13) splashed juice in E’s eye and poured hot water on her. L also described an instance when E woke in the middle of the night and observed Father standing over I with a “hammer[.]”

E testified at the hearing that there was a “lot of chaos” at Father’s house and that he was displaying “abnormal behavior.” She and her siblings all slept together in the living room at Father’s apartment because they did not feel safe and wanted to be together. She recounted the night she awoke to see her father with a “mallet in his hand going towards [I’s] head[.]” She asked Father what he was doing with the mallet, but he did not respond. It made E “so scared” and she felt unsafe in Father’s care.

E described Father “yell[ing] and . . . insult[ing]” her and her siblings in the early morning. He was not “allowing” her to visit Mother and when she decided to go on a

visit, he “pull[ed] [her] arm so tight” that she screamed. In February or March 2021, Father smacked E in the head and it ached thereafter for a “long time.” On another occasion, he poured grape juice on E’s head making her eyes sting, and while she attempted to wash her eyes, Father poured hot water on her.<sup>5</sup>

Father testified in his case that his children had been very happy in his care until the court ordered visitation with Mother. He had noticed a “lot of inconsistencies” in E’s testimony. He explained that it was Mother, not he, who had neglected and abused the children, including sexual abuse of I.<sup>6</sup>

At the conclusion of the evidence, Mother’s attorney argued that the testimony at the hearing coupled with the statements made by L and I to a social worker, as reflected in the BCDSS report,<sup>7</sup> supplied ample evidence that Father had abused the children mentally and physically. Father argued that the allegations were fabricated.

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<sup>5</sup> Mother’s attorney advised the court that L and I were present at the courthouse and available to testify. After hearing from E, the court advised counsel that their testimony was unnecessary.

<sup>6</sup> The BCDSS report in the record references that Mother was investigated for a report of child sexual abuse and neglect of L and I in February 2021; that the report was resolved as “Indicated”; that Mother disputed that finding; and that she planned to file an appeal. We do not know whether an administrative appeal was filed.

<sup>7</sup> Factual findings in the BCDSS report were admissible in evidence as an exception to the rule against hearsay under Rule 5-803(b)(8)(A)(iv), so long as both parties had “a fair opportunity to review the report.” The record reflects that Father did not object to Mother’s reliance upon the BCDSS report.

The court took a brief recess and then ruled. As a threshold matter, it concluded that the children were persons eligible for relief<sup>8</sup> and that Mother was eligible to petition for relief on their behalf. It found by “a preponderance of evidence . . . that [Father] committed the following acts of abuse[:] assault in any degree and statutory abuse of a child, both physical and mental” and granted the petition. The court ordered Father not to “abuse or threaten to abuse [E, L, or I,]” to have no contact with them, not to enter Mother’s residence, and to stay away from the children’s schools. Mother was awarded custody of the three children and Father was denied visitation.<sup>9</sup> The protective order was effective for six months, through November 7, 2021.

This timely appeal followed.

### **DISCUSSION**

Father makes three arguments on appeal, only two of which are properly before us: 1) that the trial court erred by admitting Exhibit 1, which he argues is fraudulent, and

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<sup>8</sup> The circuit court noted that E was 18 years old. It reasoned that because she still was in high school, however, she was a child under the definition of that term in the child support provisions of the Family Law Article or, in the alternative, the court found that she qualified as a “vulnerable adult” based upon her testimony. Neither ruling is challenged on appeal.

<sup>9</sup> The Maryland Case Search data base shows that in the custody case between the parties, on October 27, 2021, Mother was awarded sole legal and physical custody and Father was granted supervised visitation. The case was closed, and no appeal was taken. There is no divorce case pending.

2) that the trial court erred by crediting the testimony of Mother and E and disbelieving his contrary testimony.<sup>10</sup>

### **A. Mootness**

As a threshold matter, although the protective order expired prior to the resolution of this appeal, the appeal is not moot. *See Piper v. Layman*, 125 Md. App. 745, 748-53 (1999). As this Court has explained, a person against whom a final protective order is granted “has an interest in exoneration even if the period of the protective order has expired without incident.” *Id.* at 753. Clearly a judicial determination that Father abused his children creates a lasting stigma and he has a continuing interest in exoneration even though the protective order has expired. We thus address the merits.

### **B. 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). When a petitioner seeks relief for a child, “abuse” is defined as “the

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<sup>10</sup> The third issue raised by Father is based upon a text message that he received from the social worker at BCDSS who prepared the report for the court. He received the text message more than two weeks *after* the final protective order hearing. Because the message was not before the circuit court when it ruled on the petition, we cannot consider it.

Father makes other arguments in his brief based upon facts not in evidence and includes in an appendix to his brief a BCDSS “Notice of Investigation Closing” dated February 22, 2021 that was not before the circuit court. We likewise decline to address these arguments.



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).

The petitioner for a final protective order bears the burden of showing by a preponderance of the evidence that the alleged abuse occurred. FL § 4-506(c)(1)(ii). When the parties present conflicting evidence, we accept the trial court’s findings of facts unless they are clearly erroneous. Md. Rule 8-131(c); *Piper*, 125 Md. App. at 754. Because the trial court has “the opportunity to gauge and observe the witnesses’ behavior and testimony during the trial[.]” we defer to its credibility determinations. *Barton v. Hirshberg*, 137 Md. App. 1, 21 (2001) (quoting *Ricker v. Ricker*, 114 Md. App. 583, 592 (1997)). If the circuit court’s factual findings are supported by substantial evidence, we will not disturb them. *Id.* at 22. 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.

### **C. Admission of Exhibit 1**

The printout of the WhatsApp messages were identified by Mother and E during their testimony. Mother explained that she solicited the messages from E on April 30, 2021, the day that she filed the petition for protection from child abuse. E testified that L typed the response to Mother’s query. E identified which of the incidents of alleged abuse described by L she had witnessed and which she had not. Mother’s attorney moved to admit the exhibit at the close of her case. Father objected, arguing “It is all false, Your Honor. None of them is correct. None of them.”

On appeal, Father argues for the first time that a time stamp that appears above the first message shows that the messages were delivered at 7:39 p.m., which he contends is evidence of fraud given Mother’s testimony that she solicited the text messages the day she filed her petition. He otherwise argues that the document was altered to deceive the court. Because he did not make this argument below, it is not preserved for our review and we decline to consider it. *See* Md. Rule 8-131(a) (ordinarily, an “appellate court will not decide any [non-jurisdictional] issue unless it plainly appears by the record to have been raised in or decided by the trial court[.]”) <sup>11</sup>

#### **D. Credibility of the Allegations of Abuse**

Father’s overarching contention on appeal is that Mother lied in her testimony and that E’s testimony was coerced by Mother and her allegations of abuse are likewise fabricated. He points to minor discrepancies between allegations reported on Exhibit 1 and the testimony at trial, arguing these are evidence that Mother and E’s testimony was not credible.

In assessing the credibility of witnesses, the circuit court “was entitled to accept – or reject – *all, part, or none* of the testimony of any witness, whether that testimony was or was not contradicted or corroborated by any other evidence.” *Omayaka v. Omayaka*,

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<sup>11</sup> Even if this issue were preserved, which it is not, we would find no merit in Father’s contention. Although the printout is not dated, the time stamps on the messages reflect that Mother sent her message to E at 8:52 a.m. and that she received the responses just after 9 a.m. Mother filed her petition at 10:19 a.m. Thus, the time stamps are consistent with her having printed the messages at home before going to the circuit court to file her petition.

417 Md. 643, 659 (2011) (emphasis in original). It is the role of the circuit court, not an appellate court, to resolve conflicts in the evidence and to assess the credibility of witnesses. *See Gizzo v. Gerstman*, 245 Md. App. 168, 203 (2020) (“It is not our role, as an appellate court, to second-guess the trial judge’s assessment of a witness’s credibility.”).

The circuit court’s grant of a final protective order against Father was not clearly erroneous because there was sufficient material evidence presented for the court to find that Father had abused his children. Mother testified that the children exhibited behavioral changes in early 2021 that concerned her and told her they were scared to return to Father’s home. E testified to numerous instances of physical abuse at the hands of Father, including his hitting her in the head, stepping on I’s neck, and pouring hot water on her. She also testified to mental abuse, describing his routine verbal abuse of her and her siblings. The BCDSS report also included reports of physical and mental abuse from L and I. For all these reasons, we shall affirm the circuit court’s order.

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