

Circuit Court for Montgomery County
Case No. C-15-FM-22-807915

UNREPORTED
IN THE APPELLATE COURT
OF MARYLAND*

No. 0773

September Term, 2022

T.A.H.

v.

S.H.

Berger,
Shaw,
Ripken,

JJ.

Opinion by Ripken, J.

Filed: January 25, 2023

* At the November 8, 2022 general election, the voters of Maryland ratified a constitutional amendment changing the name of the Court of Special Appeals of Maryland to the Appellate Court of Maryland. The name change took effect on December 14, 2022.

**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.

This appeal involves a challenge by T.A.H. (“Mother”) to the Circuit Court for Montgomery County’s grant of S.H.’s (“Father”) Petition for a Protective Order.¹ The court issued a Final Protective Order granting Father sole custody of their child (“Child”) and prohibiting Mother from having access to Child.

For the reasons discussed below we shall affirm.

ISSUES PRESENTED FOR REVIEW

Mother presents the following issues for our review:²

- I. Whether the circuit court erred in finding that Mother had abused Child.
- II. Whether the circuit court erred in prohibiting Mother from having access to Child.

FACTUAL AND PROCEDURAL BACKGROUND

The parties were formerly married, but in 2018, the Circuit Court for Montgomery County granted them an absolute divorce. The court initially awarded Mother primary custody of Child, with Father having access pursuant to a specified schedule. In 2019, Mother relocated to Texas and took Child with her, contrary to the custody order. Father, having objected to the move, filed a Motion to Modify Custody in an effort to obtain primary custody of Child. The court granted Father’s motion and awarded Father, who resides in Maryland, primary custody of Child. Mother was permitted access to Child for

¹ To protect the identity of the involved child, we refer to the parties by their initials.

² Rephrased from:

- I. Did the trial court err when it granted [Father’s] Final Protective Order based upon the evidence presented[?]
- II. Did the trial court err in restricting [Mother’s] access to the minor child, in contradiction to the existing access order, without articulating the basis for no access, yet still reserving for modification in the future[?]

six weeks during the summer as well as during Child’s winter and spring breaks from school. Additionally, access to Child in Maryland was available to Mother upon at least 21 days’ notice to Father.

Father also permitted Mother to speak over the phone with Child twice a week for 20 minutes at a time.³ On multiple occasions in March of 2022, when Child was seven years old, Father overheard Mother yelling and cursing at Child during telephone calls, which resulted in Child crying and hanging up the telephone. As a result, Father became concerned and prevented further phone calls between Mother and Child. Mother told Father that Child had been disrespectful to Mother during their phone calls and that Mother would “F [Child] up if [Child] keeps being disrespectful[.]”

Later in March of 2022, Mother sent Father a text message and requested access to Child during two of the following three days. However, Father refused to permit access because Mother had not given proper notice and Father and Child already had activities planned. A few days later, Child’s school informed Father that Mother was at the school requesting to leave with Child. Father subsequently drove to the school and collected Child. As Father and Child drove back home, they noticed Mother, Mother’s new husband, and law enforcement standing nearby Father’s home. Per Father, Child was surprised to see Mother, became scared, and cried. Father and Child continued with their planned activities, and the police later informed Father that they directed Mother to leave Father’s property.

The same day, the circuit court informed Father that Mother had filed an Emergency

³ The custody order did not require Father to permit these calls between Mother and Child.

Motion for Denial of Custody. After Father emphasized Mother's 21-day notice obligation for access to Child, Mother's motion was denied. Mother also called law enforcement and alleged that Child was being abused. This resulted in law enforcement conducting a welfare check at Father's home and leaving without taking any action.

As a result of Mother's behavior, Father filed a petition for a protective order on behalf of Child.⁴ The court granted a Temporary Protective Order, awarding sole custody of Child to Father and prohibiting Mother from all access. In June of 2022, a hearing was held on the protective order petition. Mother did not attend, either in person or virtually.⁵ As a result, the testimony was limited to that of Father. The court issued the Final Protective Order, awarding Father sole custody of Child and prohibiting Mother from all access to Child. The court indicated that Mother could file a motion to modify the order's conditions. Mother timely filed this appeal.

⁴ Specifically, Father alleged that Mother had threatened to take Child against the custody order and threatened to physically harm Child. Father indicated that Mother was causing mental injury to Child, engaging in stalking, and was repeatedly outside of Father's home causing Father to fear for his and Child's safety.

⁵ On the morning of the hearing, Mother filed a request for postponement, indicating that she did not feel well and could not attend the scheduled hearing. The court contacted Mother and explained that she could attend the hearing virtually. However, Mother cited rights under the Health Insurance Portability and Accountability Act (HIPAA) and refused to participate virtually in the hearing. Because Mother refused to dialogue with the court or share more than limited information about why she could not participate, the court denied Mother's request for postponement and permitted the protective order hearing to proceed with Father, but not Mother, present.

DISCUSSION

I. THE CIRCUIT COURT DID NOT ERR IN FINDING THAT MOTHER HAD ABUSED CHILD.

Pursuant to the Maryland Code, Family Law Article (“FL”), if the circuit court finds that abuse has occurred, the court “may grant a protective order to protect any person eligible for relief from abuse.” FL § 4-506(c)(1)(ii). The burden is on the petitioner to prove by clear and convincing evidence that the alleged abuse occurred. *Piper v. Layman*, 125 Md. App. 745, 754 (1999). When we review a protective order, “we accept the facts as found by the hearing court unless it is shown that its findings are clearly erroneous.” *Id.* We “consider evidence produced at the trial in a light most favorable to the prevailing party and if substantial evidence was presented to support the trial court’s determination, it is not clearly erroneous and cannot be disturbed.” *Mills v. Mills*, 178 Md. App. 728, 734–35 (2008) (quoting *L.W. Wolfe Enters., Inc. v. Md. Nat’l Golf*, 165 Md. App. 339, 343 (2005)). With respect to the circuit court’s ultimate conclusion regarding abuse, we “make our own independent appraisal by reviewing the law and applying it to the facts of the case.” *Piper*, 125 Md. App. at 754.

The definition of abuse includes “plac[ing] a person eligible for relief in fear of imminent serious bodily harm.” FL § 4-501(b)(1)(ii).⁶ The standard for determining

⁶ Father argues that the definition of child abuse is pursuant to FL section 5-701(b)(1): “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.” *See* FL § 4–501(b)(2)(i) (“If the person for whom relief is sought is a child, ‘abuse’ may also include abuse of a child, as defined in Title 5, Subtitle 7 of this article.”). However, we shall decline to consider the case under Father’s preferred standard because Father raises the alternate definition for the first time on appeal. *See* Md. Rule 8-131 (“Ordinarily, the appellate court will not decide

whether a person was placed in fear of imminent serious bodily harm is an “individualized objective one—one that looks at the situation in light of the circumstances as would be perceived by a reasonable person in the petitioner’s position.” *Katsenelenbogen v. Katsenelenbogen*, 365 Md. 122, 138 (2001). As the Supreme Court of Maryland (at the time named the Court of Appeals of Maryland)⁷ has explained:

[a] person who has been subjected to the kind of abuse defined in § 4–501(b) may well be sensitive to non-verbal signals or code words that have proved threatening in the past to that victim but which someone else, not having that experience, would not perceive to be threatening. The reasonableness of an asserted fear emanating from that kind of conduct or communication must be viewed from the perspective of the particular victim.

Id. at 139. Section 4-501(b)(1)(ii) does not require evidence of actual physical violence; to the contrary, a threat of imminent serious bodily harm that frightens the victim constitutes abuse. *See Kaufman v. Motley*, 119 Md. App. 623, 630 (1998) (affirming the trial court’s conclusion that the appellant’s threatening behavior, such as stalking appellee and their children, placed the appellee and children in fear of imminent serious bodily harm).

Mother contends that Father did not present sufficient evidence at the protective order hearing to warrant the issuance of the Final Protective Order. According to Mother, Father’s vague, ambiguous, and generalized testimony about Mother’s attempts to see Child did not demonstrate a threat of abusive behavior. Mother argues that Child could not

any other issue unless it plainly appears by the record to have been raised in or decided by the trial court.”).

⁷ At the November 8, 2022, general election, the voters of Maryland ratified a constitutional amendment changing the name of the Court of Appeals of Maryland to the Supreme Court of Maryland. The name change took effect on December 14, 2022.

have feared imminent harm, because Mother’s comments to Father regarding her intent to harm Child were never shared with Child. Moreover, according to Mother, her unexpected presence in Father’s neighborhood did not pose a threat because Mother was accompanied by law enforcement. Mother also emphasizes the lack of evidence demonstrating that she engaged in actual violence or abusive behavior towards Child.

In response, Father underscores that Mother’s prior disregard of the custody order posed a substantial risk of harm to Child. For example, Father explains that Mother’s relocation to Texas with Child in 2019 was in contravention of the custody order. More recently, Father contends, Mother’s unexpected and sudden appearance at Child’s school, whether intentional or reckless, violated the custody order’s notice requirement. Per Father, Mother’s appearance was traumatizing for Child and caused Child to cry. Father also argues that Mother’s actions have not been in Child’s best interest. As an example, Father explains that Child has “hysterically cri[ed]” after phone calls with Mother in which Mother cursed at Child.

The circuit court found that Mother placed Child in fear of imminent, serious, bodily harm because of (1) the history between the parties, (2) Mother’s comments to Father regarding Child’s behavior, and (3) Mother’s uninvited appearance at Child’s school. We shall examine each finding in turn and accept the facts as found by the court unless clearly erroneous. *See Piper*, 125 Md. App. at 754. Additionally, we address Mother’s argument that the court’s findings were the result of bias.

A. History Between Parties

The history between parties is important to understanding the relationship between them and the context in which the alleged abuse occurred. *See State v. Marr*, 362 Md. 467, 481 (2001) (“A belief, as to [] imminent danger . . . is necessarily founded upon the defendant’s sensory and ideational perception of the situation that he or she confronts, often shaded by knowledge or perceptions of ancillary or antecedent events.”); *see also Coburn v. Coburn*, 342 Md. 244, 258 (1996) (“[A] history of prior abusive acts implies that there is a stronger likelihood of future abuse.”).

Mother’s history with the parties includes intimidation and a custody order violation. In 2019, Mother relocated to Texas and took Child with her contrary to the custody order. As a result, the court granted Father primary custody of Child and restricted Mother’s access to Child. In the month leading up to Father filing the Petition for a Protective Order, Mother yelled and cursed at Child during their phone calls together, causing Child to “hysterically cry.” Child no longer wanted to talk with Mother or see her and, because Father no longer viewed the calls as healthy, Father did not permit future phone calls. Even absent prior abuse or actual violence, Mother’s past behavior negatively impacted Father and Child’s perception of Mother. The history between the parties provides support for the court’s conclusion regarding the reasonableness of Child’s fear of harm from Mother.

B. Comments to Father Regarding Child’s Behavior

Two days before unexpectedly appearing in Maryland, Mother told Father that she would “F [Child] up” if Child continued being disrespectful. There was ample reason for

Father to fear that Mother would carry out her threat given that, in the preceding weeks, Father had overheard Mother screaming and cursing at Child over the phone. It was therefore not clearly erroneous for the court to find that Mother's statement to Father was a legitimate threat of future harm to Child.

Father never shared Mother's statement with Child. However, because Father petitioned for protection on Child's behalf, the court appropriately considered Father's fear for Child's safety. Mother's threat, whether heard by Child or solely by Father, adds further support for the reasonableness of Child's fear of harm from Mother.

C. Incident Leading to the Petition for a Protective Order

The incident leading to Father's Petition for a Protective Order began when Mother messaged Father and demanded to see Child two of the following three days, in violation of the custody order's notification requirement. After Father refused Mother's request due to insufficient notice and Child's already-planned activities, Mother appeared unannounced at Child's school and attempted to remove Child from school. As Father drove Child home from school, Father and Child noticed Mother, her new husband, and the police standing together near Father's home. Despite Father's continued refusal to cede to Mother's request for access to Child, Mother remained outside Father's home until the police eventually directed her to leave.

Father and Child's fear of Mother was not made less reasonable by Mother's accompaniment with police. When Child noticed Mother for the first time during the incident, nearby Father's home, Child was frightened and began to cry. Afterwards, Child, who was just seven years old during the incident, remained nervous about Mother

unexpectedly returning and taking Child away. Mother’s unannounced appearances at Child’s school and, subsequently, outside Father’s home were all the more unexpected because Mother resided in Texas.

When considered in conjunction with Mother’s prior custody order violation and her comments to Father about hurting Child, Mother’s unilateral and unannounced attempt to remove Child from school and her subsequent appearance outside of Father’s home created serious concerns of imminent harm to Child. Such concerns were reasonable under the individualized objective standard. *See Katsenelenbogen*, 365 Md. at 138–39.

Father’s testimony to the court provided clear and convincing evidence that Child was in fear of imminent serious bodily harm when Father filed for a protective order. Therefore, the circuit court did not err in finding that the alleged abuse occurred and in issuing the Final Protective Order. *See* FL § 4-506(c)(1)(ii).

D. Mother’s Argument Regarding Bias

Mother also contends that the court was improperly guided by its subjective beliefs, based on limited information, in granting the Final Protective Order.⁸ In response, Father

⁸ Mother argues specifically that Child could not have been in fear of *imminent* harm, because Child did not know about Mother’s behavior until after the incident at Child’s school and Father’s home. However, Father testified at the circuit court hearing that Child noticed Mother nearby as Father and Child drove up to Father’s home. The circuit court examined Father’s credibility and accepted his statements as true; so too, we accept Father’s testimony as true. *See Barton v. Hirshberg*, 137 Md. App. 1, 21 (2001) (leaving the determination of witness credibility to the trial court, who had “the opportunity to gauge and observe the witnesses’ behavior and testimony during the trial” (quoting *Ricker v. Ricker*, 114 Md. App. 583, 592 (1997) (internal quotations omitted))).

explains that Mother failed to provide evidence that the court engaged in biased decision-making and that Mother is at fault for the limited information available to the court.

Where a trial judge is “guided by their personal beliefs in fashioning an outcome rather than by evidence, we and our colleagues on the [Supreme Court of Maryland] have vacated that decision.” *Azizova v. Suleymanov*, 243 Md. App. 340, 348 (2019). However, in the present case, there is no indication in the record that the court’s ruling was the result of bias. To the contrary, the court explicitly stated it relied on its evaluation of the evidence presented.⁹ We are unconvinced by Mother’s argument that the court’s reliance on limited information reveals that the court’s ruling was predicated on bias. As discussed in Section I, *supra*, there is substantial evidence in support of the court’s finding that Mother placed Child in fear of imminent harm. We, accordingly, reject Mother’s contention that the circuit court acted improperly in granting the protective order.

II. THE CIRCUIT COURT DID NOT ERR IN PROHIBITING MOTHER FROM HAVING ACCESS TO CHILD.

Mother next asserts that the protective order was punitive and harsh. As Mother explains, the court failed to do “what is reasonably necessary—*no more and no less*—to assure the safety and well-being of [Child].” *Katsenelenbogen*, 365 Md. at 137 (emphasis in original). According to Mother, the order “appears to be punitive,” because the court’s judgment relied on an alleged threat to Child, that Mother would “F [Child] up,” that

⁹ Specifically, the court stated, “Based upon the history, and based upon the words used, and based upon [Mother’s] actions of showing up uninvited and very concerning, involving the school, I’ll find that [Father] is a person eligible for relief under the statute and met his burden.”

Mother only communicated to Father. Per Mother, the court should have respected the existing custody order, considered the absence of any past abuse, and permitted Mother to have at least limited access to Child. Mother describes the protective order’s potential impact on resolution of issues in the underlying custody case and emphasizes the order’s negative and prolonged impact on Mother personally, as Child’s mother, and professionally, as an attorney. In reply, Father contends that the protective order was an appropriate means to protect Child from Mother and that the Final Protective Order was no more harsh than the Temporary Protective Order.

Protective orders are intended “to protect any person eligible for relief from abuse.”

See FL § 4-506(c)(1)(ii). As the Supreme Court of Maryland explained in *Coburn*:

The purpose of the domestic abuse statute is to protect and “aid victims of domestic abuse by providing an immediate and effective” remedy. *Barbee v. Barbee*, 311 Md. 620, 623 (1988). The statute provides for a wide variety and scope of available remedies designed to separate the parties and avoid future abuse. Thus, the primary goals of the statute are preventive, protective and remedial, not punitive. The legislature did not design the statute as punishment for past conduct; it was instead intended to prevent further harm to the victim.

342 Md. at 252. To safeguard victims from future harm, courts “should not hesitate to order that relief” which would “be most likely to provide that protection.” *Katsenelenbogen*, 365 Md. at 137. “The issuance of a protective order . . . may have consequences in other litigation.” *Id.* However, “[t]hat is *not* the concern of the court in fashioning appropriate relief.” *Id.* (emphasis in original).

In this case, after finding that Mother had abused Child, the circuit court ordered Mother to “not abuse or threaten to abuse [Child]” and to “have no contact with [Child].”

Such conditions are consistent with the purpose of protective orders—to prevent further abuse. *See Coburn*, 342 Md. at 258–59. That Mother explicitly threatened to harm Child, whether or not communicated to Child, further supported the need to deny Mother access to Child. The court was not required to grant Mother limited access to Child because she had no history of prior abuse, and the court correctly refused to prioritize Mother’s personal and professional status over the protection of Child. *See Katsenelenbogen*, 365 Md. at 136-37. Accordingly, the circuit court did not err in issuing the final protective order.

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

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