Circuit Court for Prince George's County
Case No. CADV20-18266

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1485

September Term, 2020

LOREN E. J.

v.

ANTOINE T. W.

Kehoe,
Zic,
Moylan, Charles E., Jr.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: January 27, 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.

Loren E. J. ("Mother"), appellant, appeals from the denial, by the Circuit Court for Prince George's County, of a final protective order against Antoine T. W. ("Father"), appellee. For the reasons that follow, we shall affirm the judgment of the circuit court.

We recount some of the pertinent facts from our recent opinion in the parties' dispute:

> M.W. was born on February 26, 2014, to [Mother] and [Father]. . . . .
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> When M.W. was about one year old, Father filed a complaint to establish custody and visitation of M.W. in the Circuit Court for Prince George's County, and on October 21, 2015, the parties executed a custody consent order, which was not docketed until January 15, 2016. . . . .
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> In February 2018, when M.W. was around four years old, Father filed a motion for contempt/modification of the custody order, alleging that Mother was denying him his right of visitation, and a long and contentious custody battle ensued. Apparently, in the preceding month, Mother had accused Father and Father's girlfriend's grade-school aged son of sexually abusing M.W. during a visitation. Mother reported the alleged abuse to the Charles County Department of Social Services ("DSS"), the county in which Father lived. Father denied all allegations of abuse, and a subsequent DSS investigation "ruled out" any abuse. On May 8, 2018, the parties entered into a temporary consent order. . . . .
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> Following the entry of the temporary consent order, Mother filed several motions to terminate Father's right to visitation and modify custody, based on alleged, additional disclosures by M.W. of physical and sexual abuse by Father and/or Father's girlfriend's son. Father denied all allegations of abuse, and the subsequent DSS investigation ruled out abuse. On August 22, 2018, following a hearing on the parties' motions, the juvenile court, based upon an agreement by the parties, vacated the temporary consent order and issued an order reducing Father's visitation with M.W. to three weekends a month plus certain holidays and weeks over the summer.
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> Within a week of the juvenile court's order, Mother again made accusations of physical and sexual abuse of M.W. by Father and Father's girlfriend's son based on alleged disclosures by M.W., and Mother again filed motions seeking a termination of Father's right to visitation. Father filed motions denying all allegations of abuse. A hearing was held on

November 28, 2018. A report by Charles County DSS stated that, following an investigation, it had "ruled out" any abuse, as did a Howard County Police Department child abuse/sexual assault report. Following the hearing, the court ordered that the visitation schedule set forth in the August 2018 order remain in effect, giving [F]ather three weekends of visitation a month.

Within two weeks of the court's order, Father filed a motion for contempt, alleging that Mother was denying him his right to visitation. Mother subsequently filed motions seeking a termination of Father's rights to visitation and sole physical custody. The court appointed a best interest attorney for M.W., noting in its order that although Mother continues to file multiple emergency motions for custody alleging that M.W. is being abused while visiting Father, "there have been no findings of abuse." The court also requested the Prince George's County DSS to file a report regarding all the allegations of abuse.

On October 4, 2019, a hearing was held before the court. The requested Prince George's County DSS report summarized the nine reports of abuse of M.W. by Father, made in the three different counties between July 18, 2018 and May 31, 2019, and noted that each investigation, which included a forensic interview of M.W., had ruled out abuse. The report concluded with the following statement:

> This minor child has been the subject of multiple interviews, medical exams, and five forensic interviews with no disclosure of sexual abuse. Three different jurisdictions have conducted investigations and the same conclusion, has been reached. It appears that the child is being put in the middle of an adult custody battle. Clinical impressions suggest that the child may have been coached to make these allegations as they are unfounded or inconsistent when professionally assessed by trained interviewers or detectives.

After the parties presented their arguments before the court, the parties entered into a consent order, granting Father visitation with M.W. three weekends a month.

About two weeks later, on October 21, 2019, Mother filed a motion for contempt/modification of custody, alleging, among other things, that Father had denied her FaceTime calls while the child was visiting him and Father had failed to pay certain medical expenses. Father denied the allegations.

On December 10, 2019, the parties appeared before the circuit court on Mother's motion to modify custody and the parties' cross-motions for contempt.

* * *

At the conclusion of the hearing, the juvenile court issued an oral ruling from the bench, denying Father's motion to modify custody and denying both parties['] motions for contempt. . . . .

Almost two months after the hearing, Mother filed a motion to remove M.W.'s best interest attorney, which Father opposed and the court denied. On February 12, 2020, Mother filed a motion for contempt, alleging that Father had refused to pay the cost of M.W.'s therapy. On June 24, 2020, Father filed a motion for contempt, alleging that Mother had denied him visitation with M.W. since March 6. On July 21, 2020, Mother filed a motion to alter or amend the December 10, 2019 judgment, alleging, among other things, that M.W. continues to make sexual and physical abuse disclosures about Father since the hearing. Father opposed her motion.

On September 23, 2020, following a hearing that day, the circuit court signed an order. The court reiterated its ruling issued orally from the bench on December 10, 2019. The order denied Father's motion to modify custody, and denied both parties['] motions for contempt[.] . . . .

The court signed an additional order about one week later, on October 2, 2020, that, among other things, granted Father 59 overnights with M.W. to "make-up" for access time denied by Mother; denied Mother's request to remove M.W.'s best interest attorney; denied Mother's motion for contempt for Father's failure to pay therapy costs; and denied Mother's motion to alter or amend judgment. The court treated the latter motion as a motion to modify custody, writing:

> . . . . This [c]ourt takes [Mother's] allegations very seriously and is very conscious of the repeat nature of these allegations. On seven different occasions, Child Protective Services, from three different jurisdictions, have investigated [Mother's] concerns and each time have issued a communication of "No Finding of Abuse" or closed the case without any further action. [Mother] has not provided this [c]ourt with new evidence of abuse and therefore, this Court finds no material change in circumstance. [Mother's] Motion to Alter or Amend is denied.

J. v. W., No. 778, September Term 2020, 2021 WL 4169200 (filed September 14, 2021), at *1-5 (footnotes omitted).

On November 2, 2020, Mother filed a petition for protection from child abuse, in which she contended that on October 17 and October 24, 2020, "[Father] pulled down [M.W.'s] panties and kissed her private areas during the 'morning, noon, & night' as disclosed by M.W.. [Father also] threatened to push M.W. down the stairs if she disclosed the abuse to anyone and hit her." The court subsequently granted the petition and awarded a temporary protective order.

On January 5, 2021, the parties appeared for a hearing on a final protective order. Mother requested a continuance on the grounds that she had filed "a civil complaint against" M.W.'s best interest attorney ("BIA"), "informed the [c]ourt of [the BIA's] negligence," and "obtained legal counsel," who was "not available." The court responded: "I'm not inclined to appoint another [BIA], because . . . while you filed the civil suit, that does not give me cause or any reason . . . to . . . appoint someone else to this matter." Father's counsel subsequently asked for "the resumption of visitation between" Father and M.W., and the court agreed, "provided [Father's] sister is present." When Mother asked whether "places that serve as intermediaries" would "be possible," the court responded:

> It would be except that we're in the middle of a global pandemic and therefore closed. So, . . . these cases are not easy cases, you know. And again, I'm not getting into any of the evidence right now. You know, other people have looked at this case before I have, and pretty much everybody's reached the same conclusion, that they don't have a conclusion. So, you know, again, it's a situation where we try to figure out what is in this child's best interest balanced against [F]ather's right, because nothing has really been proven.

The court subsequently continued the hearing to January 26, 2021. On that date, the parties appeared with counsel, and Mother's counsel stated that she was "entering [her] limited appearance" for "the purposes of presenting argument regarding the appointment of a [BIA] to investigate this matter before modification of the temporary protective order." The court stated that it was "unable to locate any motion that was filed by" Mother. Mother's counsel conceded that the motion was made orally, and stated: "[I]t is [Mother's] position that a [BIA] needs to be involved due to the nature of the [allegations], given the history of the case, the age of the child, and the other factors."

The following colloquy then occurred:

> [MOTHER'S COUNSEL: Mother] indicated that she filed motions to have [the BIA] removed from the case. There are issues with [Mother] and [the BIA]. However, her request for a [BIA] still remained, and it was my understanding that you were considering whether or not to reappoint [the BIA] or to have someone else on the case. So I –
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> THE COURT: I don't know that I was ever considering that, so I must have made that with a misunderstanding. But I don't know that I ever said that I was considering. I think what I said was that I was going to forward the case to the person who appoints these attorneys to have a look at it, assuming that there was a motion in the file, and I don't know that, because she said that she had filed a motion.
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> [MOTHER'S COUNSEL]: She did file several other motions, Your Honor. I am not aware that a specific motion for a [BIA] was there, and perhaps there was a misunderstanding about whether or not she needed to follow up with a written motion. If so, one can be filed as soon as today, but given the allegations and the fact that Your Honor was considering whether or not one needed to be appointed, I do think that it would be appropriate to, if that is what needs to be done. If Your Honor cannot consider ruling on that until she has a physical motion, then to allow her to file the motion so that it can be ruled upon by the appropriate judge or by yourself.
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> * * *

> THE COURT: So, counsel, you're asking me to – I mean, I'll give you a motion. . . . . My understanding was that she was trying to get her off the case, and I think we had a conversation about that. I don't know that, you know, the inclination would be to hire someone else, I mean, you know, to appoint someone else. So the [c]ourt is ready to move forward with this today[.]

Mother's counsel then "present[ed] that motion" and extensive argument in support thereof. Following argument, the court stated:

> [T]his case was before me on two prior occasions, and again [Mother] indicated that [the BIA] had been appointed to assist the minor child. And the [c]ourt understands that, you know, there were some differences that I'm not sure what the nature of them was because I didn't delve into them between her and [the BIA]. And the request was, or my recollection was, that she was going with someone different. The [c]ourt does find that this matter has been investigated on more than one occasion, and I'm not inclined to postpone it for yet another investigation. And so for those reasons, I'm going to deny the request for a [BIA.]

The court proceeded to the hearing on the final protective order, where Mother testified that, on November 1, 2020, she

> witnessed [M.W.] playing. In the midst of playing, she stood up, faced the wall, and began to make pelvic thrusting movements back and forth. In addition to the movements [Mother] witnessed, [Mother] heard [M.W.] make moaning and groaning sounds repeatedly. Upon inquiring as to what [Mother] saw, that's when [Mother] received the disclosure from [M.W..]

Mother offered into evidence an Application for Statement of Charges dated November 2, 2020, a Statement of Charges issued on that date, a "State of Maryland Child Welfare Services Safety Plan" dated April 3, 2020, a "Howard County Police Department Incident Report" dated January 27, 2020, and a September 24, 2018 e-mail from Mother to M.W.'s therapist. Father objected to the admission of the documents, and the court sustained the objections. Mother also offered into evidence, and the court admitted, a transcript of the

December 10, 2019 hearing, a December 3, 2019 letter from an attorney named Bouse to Father's previous counsel, and an invoice for M.W.'s psychotherapy and therapy sessions in 2018 and 2019.

Following the close of the evidence, the court stated:

> Stet [sic] is here for de novo hearing requested by [Mother] to the District Court for protective order. . . . .
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> . . . . [I]n order for this [c]ourt to grant a protective order, the [c]ourt has to find one of the following stipulations [sic] has occurred[.] The [c]ourt has to find by preponderance of the evidence that [Father] committed one of the following acts of abuse: Caused serious bodily harm, placed the person (indiscernible . . .) in imminent serious bodily harm, and there is no testimony to no. 2, and there really was no testimony[,] no testimony as to no. 1 either unless I can find that [Father] in this case abused the minor child, and I cannot find that based on the evidence presented. [T]he testimony presented was that the minor child came home, made pelvic movements, and she was making groaning sounds. Further testimony presented was information from hearings in the past, filings that were either prosecuted or the one court hearing that was denied. So the [c]ourt doesn't have any real evidence to substantiate assault, rape, or statutory sexual offense. Same thing, there's no testimony to support false imprisonment, stalking, statutory abuse of the child, physical, sexual, mental. And again, the [c]ourt is aware of the definition of abuse and the [c]ourt, based on the testimony, the only testimony that I have before me, is movement by a child. You know, whether that simulates, you know, that something is going on, those actions alone could mean anything. I can't interpret as to what those actions meant. . . . . So for all of those reasons, the [c]ourt is denying the motion [sic] . . . .

Mother contends that for four reasons, the court erred in denying the final protective order. Mother first contends that the court erred in finding "that it could not appoint a BIA because [Mother] failed to file a written motion with the court." But, the court did not make any such finding. After allowing Mother's counsel to make the motion orally, the court explicitly denied Mother's request on the grounds that the issue of whether Father has abused M.W. "has been investigated on more than one occasion, and [the court was]

not inclined to postpone [the hearing] for yet another investigation." Hence, the court did not deny the request because Mother failed to file a written motion.

Mother next contends that the court abused its discretion in finding "that an appointment of a BIA was not warranted[] because the matter was previously investigated on more than one occasion[] and appointing a BIA would delay the proceedings." We disagree. As the circuit court noted in its October 2, 2020 order, Mother's allegations of abuse have not only been investigated "[o]n seven different occasions," but on each occasion, "Child Protective Services [has] issued a communication of 'No Finding of Abuse' or closed the case without any further action." Mother does not cite any authority that required the court to disregard the lack of any finding of abuse, or the effect of a delay in the proceeding, in resolving her request for appointment of a BIA, and hence, the court did not abuse its discretion in denying the request.

Mother next contends that the court abused its discretion in finding "that it did not have any 'real' evidence to substantiate abuse[] because the evidence presented was already prosecuted or denied by another court." But, the fact that Mother's allegations of abuse have never been found to be meritorious is not the only ground upon which the court denied the final protective order. 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," *Smith v. State*, 415 Md. 174, 185 (2010) (citations omitted), and here, it is clear from the court's judgment that it did not find Mother's allegations of abuse as listed in the petition to be credible. The court also explicitly found that Mother's testimony that M.W. "made pelvic movements" and "groaning sounds" were

insufficient to support a finding of assault, rape, statutory sexual offense, false imprisonment, stalking, or statutory abuse of M.W.. Although the court was not required to disregard the fact that Mother's allegations of abuse against Father have never been found to be meritorious, the court did not deny the final protective order on that single ground, and hence, the court did not abuse its discretion in reaching its judgment.

Finally, Mother contends that the court erred in concluding, during the final protective order hearing, that Mother "requested a de novo hearing." Assuming, *arguendo*, that the court misspoke in referring to the hearing as a "de novo" hearing, there is no evidence that the court, but for its error, would have awarded Mother a final protective order, and Mother does not cite any authority that required the court to award a final protective order simply because it had previously awarded a temporary protective order. Hence, Mother was not prejudiced by the misstatement.

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