

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 1678

September Term, 2013

HOSSEIN HOSSEINNIAN

v.

AMY HOSSEINNIAN

Eyler, Deborah S.,
Hotten,
Nazarian,

JJ.

Opinion by Nazarian, J.

Filed: June 10, 2015

*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.

Amy Hosseinnian filed a Petition for Protection from Child Abuse in the Circuit Court for Montgomery County against Hossein Hosseinnian (“Father”), on behalf of her minor sister, Emily Hosseinnian. The court held a hearing on September 23, 2013 (the “Hearing”), and granted a Final Protective Order directing Father to stay away from Emily for a period of one year. Father filed a timely notice of appeal on October 11, 2013. The Final Protective Order expired by its own terms on September 23, 2014, and would appear to be moot, but Father argues we should consider his appeal anyway. We do not agree with him that Maryland law necessarily compels us to do so, but we proceed to the merits nonetheless, conclude that the circuit court did not err when it found abuse based on the evidence presented at the Hearing, and affirm.

I. BACKGROUND

Emily and Amy lived with Father in September 2013, when the incident at issue took place. Father lived in subsidized housing, and the girls had asked him early that summer if they could get a dog. Father agreed, reluctantly he says, in spite of the fact that he was allergic to dogs and he is prohibited from owning a dog weighing more than thirty pounds. And so the girls bought a Siberian Husky puppy that ultimately became a “constant point of contention” between the girls and Father. The situation was exacerbated by Father’s house rules, which prohibited the dog from being in any common areas of the home.

On September 7, 2013, the dog escaped from Emily’s room, and Father threw a shoe at the dog in an attempt to keep it out of the kitchen. This led to a physical altercation between Emily and Father in which, according to Emily, he pushed her aside as she

attempted to place herself between him and the dog. The next day, they got into another argument about the dog, and Father demanded that Emily and the dog leave the home immediately. Emily contacted her sister, Amy, who filed a Petition for Protection from Child Abuse in the circuit court and took Emily to live with her. An *ex parte* Protective Order was granted the next day, and the court held the Hearing on September 23, 2013.

Early in the Hearing, the court noted that Child Protective Services conducted an investigation and prepared a report (the “Report”). The court gave copies of the Report to the parties at the Hearing and questioned them about its contents. Moreover, in making its findings, which we discuss shortly, the court referenced and read directly from the Report.¹

Emily testified that she was afraid to return to live with Father after the fight over the dog, not just because of that incident, but also because Father had a history of “get[ting] very aggressive towards” her. She explained that she “never felt safe at home. And every time I would try to talk to [Father] about things or every time when we’d get into an argument, he hit me. And then on two separate occasions while we were in the car, he backhanded me.” She also testified that he had hit her on other occasions, and that she was, per the petition, “fearful for her safety.” When asked to elaborate, she explained:

My dad’s . . . not really the most stable person. And he has said things in the past, like—that when me and my sister are out of the house, he might as well just kill himself because then he has nothing else. And one time when I was younger, . . . I think I was in elementary school, . . . I can recall seeing him like be

¹ Although the record does not contain a copy of the Report, Father does not appeal the court’s reliance on the Report (although he did, at the Hearing, deny a number of statements made about him in it).

really out of it, and sometimes he would hold knives to his wrist.

Emily later testified about Father's mental health problems and the poor relationship they had; when Father's counsel tried to suggest that the dog served as the only source of tension, and that Emily simply didn't like that Father was too strict, she tied her fears to Father's anger management:

[EMILY]: [I] don't believe that the big problem is the dog. I believe that the big problem is [Father's] anger management and power issues.

[FATHER'S COUNSEL]: So you don't like the fact that he's strict?

* * *

[EMILY]: No, I've lived with a strict parent all my life. I can tolerate that. *I can't live with an aggressive parent that I'm scared to go home to.*

(Emphasis added.)

Amy also testified to previous instances of abuse. She specifically described a time when Father had neglected to keep food in the house in order to teach them a lesson about the importance of self-reliance. In order to protect Emily, she said, she had removed Emily from Father's home after the incident with the dog, spoken with her school's guidance counselor and CPS, and provided for Emily's basic needs.

Father responded to the allegations by claiming *first*, with respect to the incident with the dog, that he never touched Emily or shoved her. *Second*, in response to questions from the court, he denied abusing either of his daughters. *Finally*, he claimed that he had

recently told Amy that *he* was scared that Emily might try to kill him, based on her behavior at the table and the language she used.

The circuit court found that Father’s actions had placed Emily in fear of imminent serious bodily harm, and thus qualified as abuse under Md. Code (1999, 2006 Repl. Vol., 2014 Supp.), § 5-701(b) of the Family Law Article (“FL”). The court explained that evidence of prior abuse was relevant to the inquiry, and that the court had gleaned from both Emily and Amy’s testimony “a pattern of behavior that indicates abusive conduct toward both girls, but more particularly recently towards Emily with regard to stressors that have developed surrounding this pet.” The court also cited the portions of the Report recounting Father’s answers to questions about his disciplinary philosophy and practices, and concluded that Father’s denial of those conversations was not credible:

[Father] in the report prepared by Protective Services indicates that—in the report he was asked several questions, including the manner in which he uses corporal punishment to discipline his children. And what the social worker wrote in the report is, “The strength he puts behind the spanking is determined by how much disappointment he wishes to express to his children.” . . . So I’m not suggesting that [Father] does not have the authority to set rules in his home. But what I am saying, is, sir, you do not have the right, in fact, you have the obligation to provide a safe nurturing environment for your child, who is a minor. It’s not whether you’d like to. It’s your duty. It’s—you’re legally mandated to do it until she’s 18 years old.

So I find that your testimony, sir, is not credible because I don’t know how [the social worker] would know these things to put them in her report if she did not discuss them with you.

Finally, the judge explained what she saw in the courtroom that led her to conclude that Emily was in fear of imminent serious bodily harm:

[T]he testimony that I have heard in this very unfortunate situation is that a pattern has developed in the manner in which you conduct your household that has left both of your children, I've watched them all day now, physically devastated. [¶] This is not two little teenage girls that want to have their way and are here to say or do whatever they need to to get their way. *These are two people that have been sobbing, sobbing since they walked into this courtroom this morning.* That is not indicative of two people that have a disagreement with you, sir, about a pet. *What it is indicative of is the testimony that I've heard, is a pattern of behavior exhibited by you with your method of parenting, which I find there is clear and convincing evidence that your conduct has placed [Emily] in fear of imminent serious bodily harm; also, that it amounts to assault.* Because when you throw that shoe and she's trying to protect the dog, she's also trying to protect herself in this circumstance she's living in.

(Emphasis added.)

The court entered a Final Protective Order on September 23, 2013, which was valid for one year. Father filed a timely notice of appeal.

II. DISCUSSION

Father raises a narrow challenge, which we reproduce *verbatim* from his brief:

Did the Circuit Court err when it made a finding of abuse on the fact that [Father] threw a slipper at [Emily's] dog?

This characterization misses the point. The court did not find abuse based on what happened with the dog—the court found that the conflict around the dog was a flashpoint in an already deeply troubled relationship that threatened Emily's safety. The court assessed the credibility of the parties and found abuse by clear and convincing evidence

based on the record, which properly included not only the specific incident, but also the difficult past that both girls had with Father.²

We review the circuit court’s entry of a final protective order under FL § 4-506, which provides that “if the judge finds by a preponderance of the evidence that the alleged abuse has occurred, . . . the judge may grant a final protective order to protect any person eligible for relief from abuse.” FL § 4-506(c)(1)(ii). “Abuse” is defined as, among other things, “an act that places a person eligible for relief in fear of imminent serious bodily harm.” FL § 4-501(b)(1)(ii).

Our review of the court’s decision is narrow:

“When conflicting evidence is presented, we accept the facts as found by the hearing court unless it is shown that its findings are clearly erroneous.” *Piper*, 125 Md. App. at 754. We leave

² We pause to explain why we are addressing the merits even though the Order expired in September 2014. Maryland courts have considered moot appeals grounded in potentially recurring public policy issues that could evade appellate review. *See La Valle v. La Valle*, 432 Md. 343, 352 (2013). Father does not seek to vindicate broader concerns, though, but rather to erase the stigma that he claims he suffers as the subject of a protective order he claims was entered wrongfully. He cites *Piper v. Layman*, 125 Md. App. 745 (1999), a case in which we considered an appeal from a protective order grounded in a finding that the appellant had placed the appellee “in fear of imminent bodily harm by stalking her.” *Id.* at 748. Even though the protective order had expired, we reasoned that “[i]n light of the stigma that is likely to attach to a person judicially determined to have committed abuse subject to protection under the Domestic Violence Act, . . . the expiration of the protective order does not automatically render the matter moot.” *Id.* at 753. We explained that the possibility that the stigma would be removed, if the order were vacated, gave “substance to [the] appeal.” *Id.* (quoting *Williams v. Williams*, 63 Md. App. 220, 226, *aff’d*, 305 Md. 1 (1985) (brackets in original)). Father reads *Piper* as creating essentially a blanket exception to the mootness doctrine in stigma cases. We decline to adopt such a broad principle, but find in this case that the similarities between *Piper* and the facts here, along with the straightforward and factually limited question Father raises, counsel collectively in favor of exercising our discretion to reach the merits.

the determination of credibility to the trial court, who has “the opportunity to gauge and observe the witnesses’ behavior and testimony during the trial.” *Ricker v. Ricker*, 114 Md. App. 583, 592 (1997).

Barton v. Hirshberg, 137 Md. App. 1, 21 (2001).

In this case, the circuit court grounded its decision largely on the credibility of the parties, and its assessment of the parties’ testimony and demeanor in court represents exactly the kind of opportunity to assess credibility that we as a reviewing court lack. Emily’s testimony, which the court believed over Father’s, sufficiently supported a finding that she feared “imminent serious bodily harm.” As the Court of Appeals has explained, the “proper standard” for determining “imminent serious bodily harm” is an “individualized objective one—one that looks at the situation in the 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). Father recasts Emily’s testimony in his brief as “[t]wo vaguely recalled slaps, from two years prior, [that] have no substantive bearing on an assessment for need for protection.” But Father had a full opportunity to offer his version of events during the Hearing, and the court found Emily’s version more credible than his, and found as well a far broader pattern of abuse (qualitatively and quantitatively) that included physical abuse in the home, physical abuse while Father was driving with Emily, physical abuse of Amy, and emotional abuse. It is

not our role to re-weigh conflicting testimony, and the court did not err in finding abuse based on clear and convincing evidence.

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