Circuit Court for Harford County
Case No. 12-Z-17-65

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1953

September Term, 2017

---

IN RE: A.A.

---

Kehoe,
Fader,
Kenney, James A., III
(Senior Judge, Specially Assigned),

JJ.

---

Opinion by Fader, J.

---

Filed: November 16, 2018

*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.

Appellant A.A., a juvenile at the time of the relevant incident, appeals from the entry of a peace order precluding him from having any contact with J.S., also a juvenile at the relevant time and A.A.'s high school classmate. Although he did not contest any of the facts that support the juvenile court's conclusion that he assaulted and committed a sexual offense against J.S., he contends that the juvenile court nonetheless erred in entering a peace order that did not allow him to continue attending classes at the same high school attended by J.S. He argues that the Circuit Court for Harford County, sitting as a juvenile court, erred in three respects: (1) in concluding that the statutory requirements for a peace order were met; (2) in finding that J.S. met the burden of showing that A.A. was likely to commit a prohibited act in the future; and (3) in imposing a peace order that went beyond the minimally required relief. As to the first two issues, we disagree and so affirm the entry of the peace order. As the peace order has since expired, we conclude that the third issue is moot and so decline to address it.[1]

## BACKGROUND

The basic facts of the incident that gave rise to the peace order are not in dispute. A.A. and J.S. were seniors attending the same high school when, on October 13, 2017,

[1] In *Piper v. Layman*, 125 Md. App. 745, 753 (1999), this Court declined to treat a challenge to an expired protective order as moot in light of the potential for future prejudice arising from the finding of abuse underlying the order. It is less clear that the same rationale applies here, where the juvenile peace order will be sealed from public view. Nonetheless, based on the rationale set forth in *Piper*, we have not treated A.A.'s challenge to the peace order here as moot to the extent his claims attack the validity of the order and the findings on which it was based. However, that same rationale does not extend to his contention that the scope of the order was too broad. That contention is moot.

A.A. assaulted J.S.[2] At the peace order hearing, J.S., who appeared pro se, testified the she was on her way out of the school around 6 or 7 p.m. when A.A. called out to her. What she initially thought was going to be a friendly gesture from A.A. "turned into more," with "touching and grabbing" on both the "upper body" and "the buttocks part." When she first tried to get away, she "wasn't physically strong enough to let [her]self free . . . ." A.A. then pushed her into "another room" that was "completely dark." The second time she tried to free herself she was "able to physically push him off of me . . . ." She reported the incident promptly to an adult.

J.S. testified that the incident "was very unexpected," "random," and that she "didn't see it coming at all." Although they had been on the track team together, she and A.A. had never spoken or had any physical contact before that day. As a result of the incident, J.S. "was scared for [her] safety" and was worried about A.A. returning to school "[b]ecause now that it happened once, he's capable of doing it again." At the conclusion of J.S.'s testimony, A.A. made a motion for judgment, which the court denied.

A.A. did not dispute J.S.'s account of the incident. To the contrary, he testified that he "[felt] very regretful and remorseful and [he] apologized to [J.S.] and her parents for what [he] did to them." Much of his testimony focused on how the incident and his subsequent suspension from school had affected his life. Among other things, he had begun attending weekly counseling sessions in which he spoke with his therapist "about

[2] According to the transcript of the November 16 hearing, J.S. mistakenly answered that the incident occurred on "Friday, November 13th." However, it was undisputed that the incident actually occurred on Friday, October 13; November 13, 2017 was a Monday. The peace order complaint stemming from the incident was filed on October 27, 2017.

how this happened." Through those sessions he was "learning about boundaries and I'm learning about how to stop this from happening – how to make sure that this will never happen again in the future."

The court accepted into evidence a letter from his therapist stating that the incident had caused A.A. "a great deal of sadness and remorse." The therapist also provided her "clinical opinion" that A.A. "is no threat to himself or others in society," that his behavior during the incident was contrary to his moral values, and that "he has been suffering internal turmoil trying to reconcile the severity of the consequences for his behaviors displayed on that day." She recommended that A.A. continue weekly therapy sessions "in order to allow him an outlet and support to successfully explore, learn and express himself. With this continued weekly support it is expected for [A.A.] to be able to function while recovering from this mental health crisis."

A.A. further testified that if he were permitted to return to school, he would avoid any contact with J.S. His interest was in graduating from school and going to college, for which he had received a number of acceptances and significant scholarship money. He said that "[t]his whole situation has changed my life and I realize that I can't let anything like this happen again."

The only other witness was A.A.'s mother, who testified about what she asserted was her son's stellar academic and personal record before the incident, the effect of the incident on his life, and efforts they would take to ensure that A.A. avoided any contact with J.S. at school if he were permitted to return.

At the conclusion of the testimony, the court explained its reasoning in entering the peace order. The court observed that if it were to accept at face value all of the testimony by A.A. and his mother about what kind of a person he is and has been, "this act should have never occurred in the first place." And yet the incident did occur. The court found all of J.S.'s testimony to be credible and concluded that the incident revealed "alarming behavior . . . that would suggest to the Court that it could, in fact, happen again. . . . Here, we have two individuals that really there's no reason why they should have had the contact, but they had this contact and she's touched in her buttocks and grabbed and then placed as she's moving into another room of isolation that causes her to run out, to break free and seek help." The court found A.A.'s testimony regarding "some positive steps" he had taken to be "[in]sufficient for this Court to say this behavior is not going to happen again." To the contrary, the court concluded that the odd circumstances of the incident suggested that it was likely to recur. The court thus found, by clear and convincing evidence, that J.S. was eligible for relief, that the incident occurred within 30 days of the filing of the petition, and "that it is likely to be an act that will occur again in the future." The court entered a six-month peace order prohibiting A.A. from contacting, threatening, or committing any prohibited act against J.S. and staying away from her residence and her school.

A.A. appealed. While the appeal was pending, the peace order expired.

**DISCUSSION**

A.A. challenges the issuance of a peace order against him. In such a proceeding, "[t]he burden is on the petitioner to show by clear and convincing evidence that the alleged abuse has occurred." *Piper*, 125 Md. App. at 754. "If the court finds that the petitioner

has met the burden, it may issue a [peace] order tailored to fit particular needs that the petitioner has demonstrated are necessary to provide relief from abuse." *Id.* (quoting *Ricker v. Ricker*, 114 Md. App. 583, 586 (1997)). We accept the hearing court's findings of fact unless they are clearly erroneous. *Piper*, 125 Md. App. at 754. "As to the ultimate conclusion, however, we must make our own independent appraisal by reviewing the law and applying it to the facts of the case." *Id.*

## I. THE JUVENILE COURT DID NOT ERR OR CLEARLY ERR IN CONCLUDING THAT THE UNDISPUTED FACTS SATISFIED THE STATUTORY CRITERIA FOR ISSUANCE OF A PEACE ORDER.

### A. The Juvenile Court Did Not Err in Concluding That J.S. Proved by Clear and Convincing Evidence That A.A. Had Committed an Assault and a Statutory Sexual Offense.

A.A. first argues that the juvenile court erred in finding that J.S. proved by clear and convincing evidence statutory requirements for the issuance of a peace order. Under § 3-8A-19.2 of the Courts and Judicial Proceedings Article, a court may issue a peace order to protect a victim if it "finds by clear and convincing evidence that the respondent has committed, and is likely to commit in the future, an act specified in § 3-8A-19.1(b) of this subtitle against the victim . . . ." Here, the juvenile court found that A.A. committed two of the specified acts: "assault in any degree" and "rape or statutory sexual offense (or attempt) in any degree." Md. Code Ann., Cts. & Jud. Proc. § 3-8A-19.1(b)(iii) & (iv). A.A. contends the court erred in doing so for two reasons: (1) the "single, isolated incident" to which J.S. testified was "insufficient to meet the statutory requirements of a Juvenile Peace Order"; and (2) J.S. testified that she initially thought A.A. was just being friendly and "a common expression of familial or friendly affection" does not qualify as

criminal sexual contact. Md. Code Ann., Crim. Law § 3-301. Each of these claims asserts that the court misapplied the law to undisputed facts, which we review without deference.

A.A.'s contention that the court erred is without merit. A.A. does not make a serious argument that the undisputed evidence of his nonconsensual "touching and grabbing" of J.S. did not constitute an assault, nor could he reasonably do so. *See Snyder v. State*, 210 Md. App. 370, 382 (2013) (explaining that second-degree assault includes a battery); *Nelson v. Carroll*, 355 Md. 593, 600 (1999) ("A battery occurs when one intends a harmful or offensive contact with another without that person's consent."). A.A.'s only argument that the incident did not constitute a sexual offense is his contention that J.S.'s testimony that she initially believed A.A. just wanted a friendly hug somehow contradicted her testimony as to the nonconsensual events that followed when he instead started to grab her and prevented her from escaping. There was no contradiction in J.S.'s testimony, which established sufficient grounds for the juvenile court to conclude that A.A. had committed a sexual offense when he grabbed her buttocks without her consent. *See* Md. Code Ann., Crim. Law § 3-308(b)(1) (defining fourth degree sexual offense to include a person engaging in "sexual contact with another without the consent of the other"); § 3-301(e)(1) (defining "sexual contact" to include "an intentional touching of the victim's or actor's genital, anal, or other intimate area for sexual arousal or gratification, or for the abuse of either party").

A.A. argues that the juvenile court erred by showing favoritism toward the unrepresented J.S. by guiding her testimony, which otherwise was too vague to meet the statutory requirements. Although the court did prompt some of J.S.'s testimony, including

by telling her that "[y]ou have to tell me what happened" and asking her to be specific and to provide some basic factual information, the court did not ask any improper questions nor did it suggest any answers to J.S.[3] In our view, the court acted properly when confronted with an unrepresented applicant for a juvenile peace order and did not deprive A.A. of due process.

### B. The Juvenile Court Did Not Clearly Err in Concluding That J.S. Proved by Clear and Convincing Evidence That A.A. Was Likely to Commit a Prohibited Act in the Future.

A.A. next contends that the court clearly erred in its factual finding that he was likely to commit a prohibited act in the future. Cts. & Jud. Proc. § 3-8A-19.2. He argues that J.S.'s testimony that she was worried that he would assault her again was merely speculative, whereas he presented much stronger evidence that he would not do so, including evidence that he had not had any prior incidents of serious misconduct, he had an excellent academic record and was very close to graduating, he had a supportive family and a bright future, he was regretful and remorseful, he had made progress in counseling, and he had a plan to avoid any contact with J.S. He also argues that J.S.'s testimony that he was "probably capable of doing this again" was insufficient for the juvenile court to find a likelihood that he would do so.

We conclude that the juvenile court did not clearly err in finding clear and convincing evidence that A.A. was likely to commit a prohibited act in the future. As the

[3] The court's questions were not suggestive, but instead sought basic information such as what part of her body A.A. grabbed (after J.S. had testified that he grabbed her), the date of the incident, and J.S.'s age and year in school.

juvenile court observed, many of the same factors on which A.A. relies for his claim that a future incident was unlikely already existed before the incident, including his lack of prior incidents and his academic record, impending graduation, college plans, and supportive family. As a result, those factors hardly established that there would be no recurrence. And although he had apparently made some progress in the two or three weekly counseling sessions he had attended,[4] neither his discussion of that progress nor that of his counselor established that he had overcome whatever problems led to the incident in the first place. A.A. testified only that he was "learning about . . . how to make sure that this will never happen again in the future." His counselor wrote that "he has been suffering internal turmoil" and would benefit from further therapy sessions to give him an outlet and allow him "to be able to function while recovering from this mental health crisis." Although both suggested some measure of progress, neither A.A.'s testimony nor his counselor's letter identified the cause of his behavior during the incident or indicated that he had yet progressed far enough to give assurance that the issue was resolved.[5]

Moreover, the juvenile court's conclusion as to the likelihood that A.A. would engage in prohibited conduct in the future relied heavily on the unexplained nature of the

[4] According to the letter from A.A.'s therapist, which was dated November 8, 2017, A.A. had been assessed on October 24, 2017 and had been attending weekly therapy sessions since then. Based on the schedule of meeting every Tuesday, that would mean A.A. had attended two therapy sessions at the time the letter was written, or three if such a session occurred on the date of the initial assessment.

[5] Indeed, the circuit court could have interpreted the counselor's letter identifying A.A.'s "internal turmoil trying to reconcile the severity of the consequences for his behaviors displayed on that day" as suggesting that A.A. had not yet come to grips with the severity of his actions.

incident. The court was alarmed by the seeming randomness and aggressiveness of the incident, which was neither between strangers nor close friends. In the absence of any explanation of what led to the incident in the first place, and in deference to the juvenile court's opportunity to observe the behavior and testimony of both A.A. and J.S. on the witness stand, we cannot say that the juvenile court clearly erred in finding that A.A. was, at that point, likely to commit another prohibited act against J.S.

## III. A.A.'S CHALLENGE TO THE SCOPE OF THE PEACE ORDER IS MOOT.

A.A.'s final challenge to the peace order is his contention that the scope of the juvenile court's order exceeded the court's authority because it extended beyond what was minimally required to assure J.S.'s safety. *See* Cts. & Jud. Proc. § 3-8A-19.2(c)(2) ("[T]he order shall contain only the relief that is minimally necessary to protect the victim."). Specifically, A.A. contends that the evidence established that there was no need to order A.A. to stay completely away from the school he and J.S. both attended because the two students did not have any regular interaction at school and it would be possible to adjust schedules to ensure that they did not interact at all. He also argued that there was no basis for extending the scope of the order to J.S.'s home. As the peace order has now expired, this contention relating to the scope of that order is moot. We therefore decline to address it.

**JUDGMENT AFFIRMED. COSTS TO BE PAID BY APPELLANT.**