In the Circuit Court for Frederick County
Case No. 10-C-16-002803 DV

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1936

September Term, 2016

MATTHEW SCHMIDT

v.

KRISTINA SCHMIDT

Eyler, Deborah S.,
Leahy,
Thieme, Raymond G., Jr.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Eyler, Deborah S., J.

Filed: November 13, 2017

In a domestic violence case, the Circuit Court for Frederick County entered a final protective order in favor of Kristina Schmidt ("Kristina"), the appellee, and against Matthew Schmidt ("Matthew"), her husband, the appellant. In this appeal, Matthew presents two questions,[1] which we have rephrased as:

> I. Did the circuit court err by taking judicial notice of facts alleged in a prior petition for protection from domestic violence?
>
> II. Did the circuit court err by considering findings made in a report prepared by the Frederick County Department of Social Services ("FCDSS") when that report had not been formally admitted into evidence?

For the following reasons, we answer both questions in the negative and shall affirm the order of the circuit court.

FACTS AND PROCEEDINGS

The parties were married on September 18, 2008. They have two daughters, R., age 8, and T., age 4. During their marriage, they lived together in a house in Middletown. Both parties are employed by the Frederick County Public Schools ("FCPS"), Matthew as a high school math teacher and Kristina as an English specialist for the central office. They separated on or about September 20, 2016.

[1] The questions as posed by Matthew are:

> 1. Did the court err in taking judicial notice *sua sponte* of disputed facts raised in relation to a previous case between the parties?
>
> 2. Did the trial Court err in considering the report prepared by the Department of Social Services, though such report was neither moved nor admitted into evidence?

On June 8, 2016, before the parties separated, Kristina filed a petition for protection from domestic violence ("First Petition") in the District Court of Maryland for Frederick County. She alleged that on or about June 2, 2016, Matthew slammed his laptop shut on her hand, breaking her wrist. She further alleged that their daughters were present during the incident; that Matthew shoved their daughters, knocking T., then age 3, to the floor; and that Matthew screamed at all of them.

Kristina appeared for an *ex parte* hearing that same day and was granted a temporary protective order ("June 2016 TPO"). The court found that Kristina was a person eligible for relief and, based upon the facts alleged in the First Petition and her testimony before the court, there were reasonable grounds to believe that Matthew had committed "[a]ssault in any degree." The June 2016 TPO, which was effective until June 17, 2016, directed Matthew to vacate the marital home; to stay away from the children's school, their daycare provider, and Kristina's workplace; and to have no contact with Kristina or the children. A final protective order hearing was scheduled for June 17, 2016.

On the day of the final protective order hearing, the parties agreed to the entry of an amended and extended TPO and for the First Petition to be transferred to the Circuit Court for Frederick County for a final protective order hearing. The terms of the amended June 2016 TPO were identical to the original TPO, except that it was effective until June 24, 2016, and granted Matthew certain specified visitation with the children.

Before the final protective order hearing took place, Kristina requested that the First Petition be dismissed.

About three months later, on Monday, September 18, 2016, Kristina filed a second petition for protection from domestic violence ("Second Petition") in the District Court. She alleged, *inter alia*, that on Friday, September 16, 2016, Matthew threw his cell phone at her; "violently ripped" two boxes out of R.'s arms, shoved R., and then threw the boxes across the room; and screamed at R. and T., both of whom were crying, to "shut up." Kristina called the police. The police responded and asked Matthew to leave the home. Ultimately Kristina decided to leave with the children instead. She and the children spent the weekend with her parents. A temporary protective order was entered that same day ("September 2016 TPO").

On September 20, 2016, Matthew filed a complaint for limited divorce in the circuit court.[2] On or about that date, he also moved out of the marital home.

A final protective order hearing went forward on the Second Petition in the District Court on September 26 and 27, 2016. Both parties were represented by counsel. At the conclusion of the two-day hearing, the court denied the petition.

On Wednesday, October 12, 2016, in the Circuit Court for Frederick County, Kristina filed a third petition for protection from domestic violence ("Third Petition"). She alleged that on Monday, October 10, 2016, while she was at the marital home,

[2] The divorce case remains pending in the circuit court.

Matthew showed up unannounced. He told her that if she did not "put the house on the market and agree to give him 50/50 custody, he [would] 'make [her] pay.'" By then, Kristina had stored her personal records—including her birth certificate, social security card, and health records—in a box in the trunk of her car because she feared that Matthew would come into the marital home when she was at work and steal them. As Matthew was leaving, he opened the trunk of her car, saw these papers, and tried to take them. Kristina tried to stop him and asked him to leave. He responded, "Don't worry, I'll be back for them. Like you can stop me. I'll even bring the cops." He returned two hours later and again tried to remove her personal records. When she again asked him to leave, he said he would "track [her] down and make it hurt."

Kristina further alleged that the following day, Matthew went to the FCPS central office parking lot while she was at work, removed items from her car, and broke her taillight. He also went to the marital home and removed numerous items, including two televisions, a video game console, and some of her clothing and jewelry.

At a temporary protective order hearing held that same day, Kristina testified consistent with the allegations in her petition. She told the court that she was "afraid to be in the house . . . the kids are afraid to be in the house. He comes and he goes. He threatens. He follows through on his threats, and he's, to this point, he's gotten away with hurting us so many times." The court initially ruled that the Third Petition did not allege sufficient facts to give rise to relief. After Kristina explained that she was taking Matthew's threat to "make it hurt" very seriously because he had hurt her in the past, the

court suggested that she amend the Third Petition to include allegations of prior incidents of abuse. Kristina left the courtroom and went to the clerk's office to file an amended petition. In her Amended Third Petition, Kristina alleged:

- On October 10, 2016, Matthew pushed her out of the way to get to the trunk of her car.
- On September 16, 2016, Matthew threatened to "break [her] arm again" and ripped a phone out of her hand.
- On September 3, 2016, Matthew put his face close to hers and poked her in the chest.
- On August 30, 2016, Matthew pushed her and closed a car door on her body when she confronted him about selling marital property without her permission or knowledge.
- On August 28, 2016, Matthew pulled T. "roughly" out of a shopping cart, "bending her back, making her scream out in pain."
- On July 31, 2016, Matthew became very angry with R. When Kristina suggested he walk away, he "screamed profanity in [her] face, pushed [her], and threw his watch through the wall."
- On July 25, 2016, Matthew ripped a Barbie doll out of R.'s hands, "slamming her hand into a metal door" in the process. Later, Kristina suggested he owed R. an apology, and he responded by putting his face right in hers, poking her in the chest, and screaming "don't you ever tell me when I should or should not apologize."
- On July 23, 2016, R. kicked the back of Matthew's seat in the car and he reacted by reaching into the back seat, grabbing her leg, and squeezing it for several minutes while she screamed in pain.

At a continued hearing that same day, Kristina was granted a temporary protective order. The court ruled there were reasonable grounds to believe Matthew had committed assault, had placed Kristina in fear of imminent bodily harm, and had committed child

abuse. Pursuant to Md. Code (1984, 2012 Repl. Vol., 2016 Cum. Supp.), section 4-505(e) of the Family Law Article ("FL"), the court ordered the FCDSS to investigate the child abuse allegations raised in the Amended Third Petition and to send a copy of the report to the court.[3] A final protective order hearing was scheduled for October 19, 2016.

On October 18, 2016, Matthew moved to dismiss the Amended Third Petition. He argued that the court had denied relief based upon the allegations in the original Third Petition, concerning the events of October 10-11, 2016, and that all of the new allegations in the Amended Third Petition had been fully and finally litigated at the September 26-27, 2016 final protective order hearing. He maintained that the readjudication of those claims was barred by *res judicata*. He asked the court to dismiss the Amended Third Petition in its entirety or, in the alternative, to preclude Kristina from putting on evidence about any alleged abuse predating September 27, 2016.

On October 19, 2016, the parties appeared with counsel for the final protective order hearing. At the outset, the court heard argument on Matthew's motion to dismiss. Kristina's attorney argued that the events of October 10, 2016, were a new incident of abuse and that, even if Kristina were not eligible for relief based upon the alleged abuse that preceded the September 26-27, 2016 hearing, she still could present evidence about

[3] FL section 4-505(e) states, in pertinent part, that "[w]henever a judge finds reasonable grounds to believe that abuse of a child, . . . , has occurred, the court shall forward to the local department a copy of the petition and temporary protective order" and the local department shall investigate and send a report to the court by the date of the final protective order hearing.

that abuse because it was relevant to whether Matthew's statement to her on October 10, 2016, that he would "make it hurt," put her in fear of imminent bodily harm. The court took a recess to listen to the tape of the October 12, 2016 TPO proceeding. It then granted in part and denied in part Matthew's motion to dismiss, ruling that Kristina was precluded from putting on evidence about any alleged abuse that preceded September 27, 2016.

Kristina and Matthew each testified at the hearing. As we shall discuss in more detail, *infra,* the court also took a brief recess to permit both parties to review the FCDSS report.

Kristina described the events of October 10, 2016, as follows. Around noon, Matthew showed up at the house unannounced. He was angry. He wanted her to put something in writing stating that she would put the house on the market immediately and that they would share 50/50 custody of the children. When he was leaving, he opened the trunk of her car,[4] saw her personal papers stored inside, and tried to take them. When Kristina approached the car to try to stop him from taking her papers, he pushed her "out of the way." He then said, "don't worry, I'll be back, you can't stop me from taking them, I'll even bring the cops with me . . . ."

About two hours later, Matthew returned. He began "aggressively talking to [her] about needing to put the house on the market[.]" He again tried to take her papers out of

[4] The car, a Nissan Altima, was titled in both parties' names. It was undisputed that it was driven primarily by Kristina.

her car. When she told him to leave, he responded that he would "be back, I'm going to make it hurt." Kristina testified that Matthew's statement that he would "make it hurt" put her in fear because he had "hurt [her] many times before."

Kristina testified that the next day, when she left work, she discovered that her car had been ransacked. The inside lights were on, the tail light was broken, and items that had been in the middle console were strewn about the car. Numerous items had been taken, including money, a stroller, and a portable DVD player that she kept in her trunk.[5]

That evening, she drove to meet Matthew at a parking lot for a custody exchange. The children had been with Matthew and Kristina was picking them up. When Kristina arrived, R. was crying and screaming, "dad's a thief, dad stole our stuff[.]" R. was in the back of Matthew's SUV holding onto a television that, up until that day, had been in the marital home. R. refused to let go of it. Kristina took out her cell phone and began video recording what was happening because she feared that Matthew might hurt her or the children. Matthew told Kristina to "take control of the situation." She responded that she didn't know "what [she was] supposed to do." Matthew called the police. The police responded and spoke to both parties. Matthew left. Shortly thereafter, Kristina left with the children.

When Kristina arrived home, she found that in addition to having taken two televisions, Matthew had taken "thousands and thousands of dollars' worth of . . . joint

[5] Kristina already had removed her personal papers from the trunk because she feared that Matthew would return for them.

marital property . . . as well as [her] personal items, like dresses and shoes and undergarments and things like that, jewelry, personalized items."

At the conclusion of Kristina's testimony, Matthew's lawyer moved for judgment, arguing that Kristina had failed to meet her burden of proof to show abuse. She suggested that Kristina seemed "more upset that there [were] items taken from the house than anything else." The court denied the motion and recessed the hearing until October 24, 2016.[6]

On October 24, 2016, Matthew's attorney renewed her motion for judgment. She argued that Matthew's conduct in taking property from the marital home and from Kristina's car, although wrongful, did not rise to the level of abuse. She maintained that, assuming as true Kristina's testimony that Matthew told her he would "make it hurt," Kristina's testimony at the October 12, 2016 TPO hearing made clear that she had interpreted that statement to refer to the "taking of the material possessions," and not as a threat of violence.[7] Counsel further argued that the fact that Kristina waited two days after Matthew allegedly made that threat to file the Third Petition showed that she was not put in fear of imminent bodily harm. The only allegation of physical contact was that Matthew had pushed Kristina when he was trying to get to the trunk of her car.

[6] The court questioned Matthew directly about whether it was true that he had taken Kristina's clothing. He responded that he had taken some of her "[j]ackets, shoes, and dresses. That is it." The court suggested that Matthew should return those items prior to the continued hearing date. He complied with the court's suggestion.

[7] The record from the TPO hearing belies this assertion.

Matthew's lawyer asserted that that kind of "incidental or accidental" contact was not abuse. Kristina's lawyer responded that Matthew's "erratic and unpredictable behavior" on October 10-11, 2016, including his threat to "make it hurt," pushing Kristina, and taking her belongings, put her in imminent fear of harm given "that there have been physical incidents in the past."

The court denied the renewed motion for judgment. In doing so, the court announced that it was taking judicial notice of facts alleged in the First Petition regarding Matthew's having broken Kristina's wrist in June 2016. We shall discuss this ruling in more detail, *infra*.

Matthew then testified to his version of the events of October 10-11, 2016. He said that he went to the marital home on October 10, 2016, during his lunch break to "get some personal items." He and Kristina had an "amicable" discussion about their marriage and about selling the house. Although they disagreed "about how to proceed," they did not argue. He left the house through the door leading into the garage, where Kristina had parked her car. He noticed a box in the car with an item that belonged to him, so he "popped the trunk . . . and saw a box of items in there that were from the household," including headphones, an old computer, and a writing tablet. Kristina entered the garage "very quickly" and pushed him away from the trunk and shut it "immediately." He "backed up and said, I got to go." He returned later that afternoon, they had another amicable conversation, and he left. He denied trying to take her personal documents or making any threats.

Matthew further testified that the next day, October 11, 2016, he returned to the marital home during his lunch break. He noticed that items of marital property were "missing," including a jogging stroller and an Amazon Echo. He returned to work and sent Kristina an email about the missing items.[8] He then decided to leave work early and go to Kristina's work place to see if she had any of their joint property in her car. In the car, he found a stroller, a potty chair, and a cooler containing two portable DVD players. He took those items because he was taking the girls away for the weekend and could use them.[9] He denied that he had broken the taillight[10] or otherwise ransacked the car.

Matthew then went to the marital home and "began taking property . . . TVs, marital property, given that [he] was very worried and concerned about things, more and more things disappearing . . . ." He also took Kristina's personal belongings because he "was upset" about her having sold two mugs belonging to him on eBay and having listed for sale two collectible Teddy bears that had been gifts to the children. (He knew that the Teddy bears had not been sold.)[11]

[8] On cross-examination, Kristina's lawyer asked Matthew if he could produce a copy of this email. He replied that he did not have his phone with him.

[9] October 11, 2016, was a Tuesday, however.

[10] Kristina and Matthew agreed that the taillight already was cracked prior to October 11, 2016, but disputed whether the taillight cover was pushed in by Matthew on that date.

[11] Matthew acknowledged that Kristina agreed, in email correspondence, to split the proceeds of the sales of the two coffee mugs with him.

Later that evening, when he was waiting in the parking lot with the children for the arranged custody exchange, R. climbed into the back of the SUV where there was a television he had taken from the marital home. Matthew got out of the car and opened the back of the SUV. R. was "very upset" and tried to push the television out of the vehicle. By then, Kristina had shown up and had started to record the incident on her cell phone. Matthew asked Kristina to help him calm R. down, but she refused. Matthew braced the television with his leg to prevent R. from moving it and called 911. He called the police because he "felt like [he] was going to be accused of something wrong, and [he] felt [he] needed a third party there to help alleviate the situation." After the police arrived, he and Kristina went their separate ways.

In closing, Kristina's lawyer argued that Matthew's "uninvited and unannounced" visits to the marital home, coupled with his threat to "make it hurt," had placed her in fear of imminent serious bodily harm, especially given that he had "harmed her severely in the past." She asked the court to grant a final protective order for twelve months; to order that all communication between the parties be made via text message or email; that Matthew not be allowed near the marital home or Kristina's workplace; that Kristinia be awarded temporary custody of the children; and that Matthew's visits with the children be supervised through the Mental Health Association, per a recommendation in the FCDSS report.

Matthew's lawyer argued that the only allegations in the Amended Third Petition that could rise to the level of abuse were the threat to "make it hurt" and that Matthew

had pushed Kristina in the garage, both on October 10, 2016. Those allegations were "directly contradicted" by Matthew, however, and were not otherwise corroborated. She reiterated her argument that Kristina was angry with Matthew because he had taken jointly titled property from the marital home and that she had filed the Amended Third Petition to get back at him.

The court ruled from the bench. The judge explained that the FCDSS report was "concern[ing]" because, in an interview with the CPS worker investigating the allegations of child abuse, Matthew had "minimized the seriousness of [Kristina's] broken wrist [in June 2016], stating . . . [that] they were struggling over the computer and he didn't intentionally hurt [her]." The judge was concerned because that struggle had taken place in front of the children.

The judge also expressed concern about the evidence that Matthew had made two unannounced visits to the marital home on October 10, 2016, followed by two surreptitious visits the next day to remove items of property, as well as a surreptitious entry into Kristina's car for that same purpose. The judge viewed the property dispute as indicative of Matthew's "need to control" Kristina. The judge credited Kristina's testimony that Matthew had said he would "make it hurt," and rejected Matthew's testimony to the contrary. In light of the fact that the last time Kristina and Matthew had "struggled over property she got a broken wrist," the judge concluded that Matthew's threat in fact placed Kristina in fear of imminent serious bodily harm.

The court granted a final protective order for a period of one year. During that time period, Kristina was awarded exclusive use and possession of the Nissan Altima and the marital home. She was awarded primary physical and legal custody of the children. Matthew was allowed supervised visitation with R. and T. every other weekend at a visitation center. Aside from those visits, Matthew was prohibited from having any contact with Kristina, R., or T., except through text messages pertaining to visitation.

This timely appeal followed.

DISCUSSION

I.

Matthew contends the circuit court erred by taking judicial notice of the fact that he broke Kristina's wrist in June 2016. He asserts that that was a disputed fact not subject to judicial notice.

Kristina responds that Matthew failed to preserve this issue for review because he did not object to the court's announced intention to judicially notice facts alleged by Kristina in the First Petition and found sufficient to support the grant of the June 2016 TPO. Kristina maintains that, even if preserved, the issue lacks merit because the court properly took judicial notice of the prior protective order proceeding.

For the following reasons, we conclude that this issue has been waived. On October 24, 2016—the second day of the final protective order hearing—when ruling on Matthew's renewed motion for judgment, the court explained that it was "very concerned about [Matthew's] statement [on October 10, 2016], ['I will make it hurt,']" given the

allegation in the First Petition that Matthew previously had broken Kristina's wrist. The court stated that it would take "judicial notice" of the First Petition, which it observed was voluntarily dismissed by Kristina prior to the final protective order hearing. The court further stated that it had reviewed the case file for the First Petition and that the District Court judge who had presided over the temporary protective order hearing had "made a finding that [Matthew] had broken [Kristina's] wrist." The court emphasized that it could "take into consideration prior acts of abuse against [Kristina] . . . [and t]he fact that that was a serious injury that occurred[.]" For those reasons, the court ruled that it would deny the motion for judgment.

In response to the court's remarks, Matthew's lawyer replied, "Okay." She then asked if she should call her first (and only) witness. She did not object to the court's having taken judicial notice of the First Petition or the findings at the June 2016 TPO hearing.

Judicial notice came up a second time during Kristina's lawyer's rebuttal closing argument. Kristina's lawyer urged the court to focus on Matthew's behavior, not on the property dispute. She argued that it was reasonable for Kristina to take Matthew's threat to "make it hurt" seriously given that he had "broken her wrist in June [2016]." She reminded the court that it had judicially noticed that fact earlier in the proceeding.

The court offered Matthew's attorney an opportunity for surrebuutal. She stated, "Your Honor has taken judicial notice, as [Kristina's counsel] points out. I would also point out that the findings by [the judge that presided over the September 26-27, 2016

final protective order hearing] was that no abuse had occurred sufficient for the issuance of a protective order[.]"

Rule 5-201 governs judicial notice of adjudicative facts. It permits the court to take judicial notice of a fact "not subject to reasonable dispute in that it is either (1) generally known within the territorial jurisdiction of the trial court or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned." *Id*. at (b). The court may take judicial notice of a fact "at any stage of the proceeding" whether upon motion of a party or *sua sponte*. *Id*. at (c), (d), & (f). "Upon timely request, a party is entitled to an opportunity to be heard as to the propriety of taking judicial notice and the tenor of the matter noticed. In the absence of prior notification, the request may be made after judicial notice has been taken." *Id*. at (e).

In the case at bar, the court announced its intention to take judicial notice of facts alleged by Kristina in the First Petition, which had resulted in a finding by the District Court at the June 2016 TPO hearing that there were reasonable grounds to believe Matthew had committed an assault against Kristina. Matthew did not object to the court's doing so or request an opportunity to be heard "as to the propriety of taking judicial notice." *Id.* Matthew also did not object when the matter was raised during Kristina's lawyer's rebuttal closing argument. Rather, Matthew affirmatively acknowledged that the court had taken judicial notice of the allegations in the First Petition, but suggested that it also take notice of the Second Petition, which had resulted in a denial of a final protective order. Having failed to object or seek any relief from the

trial court at a time when the court could have granted him relief, Matthew has waived this contention of error.[12]

II.

Matthew contends the court erred by considering the FCDSS report in deciding whether to grant a final protective order because that report never was introduced into evidence at the hearing. Kristina responds that reports prepared by a local department pursuant to FL section 4-505(e) are not of the type that need to be introduced into evidence because they are sent directly to the court for its review. Moreover, because both parties were given an opportunity to review the report during a recess at the hearing, the court's consideration of the report was not prejudicial to Matthew.

As noted, FL section 4-505(e), which appears in the section of the Domestic Violence Subtitle pertaining to temporary protective orders, requires that if a court "finds reasonable grounds to believe that abuse of a child . . . has occurred, [it] shall forward to the local department a copy of the petition and temporary protective order." The local department is required to "investigate the alleged abuse" and to "send to the court a copy of the report of the investigation" "by the date of the final protective order hearing."

[12] Even if this issue were properly before us, Matthew would not prevail. Ordinarily, it is appropriate for a court to take judicial notice of court records. *See Marks v. Criminal Injuries Comp. Bd.*, 196 Md. App. 37, 78 (2010). Moreover, the Court of Appeals has made clear that, in a final protective order hearing, "[a]llegations of past abuse [are admissible to] provide the court with additional evidence that may be relevant in assessing the seriousness of the abuse and determining appropriate remedies." *Coburn v. Coburn*, 342 Md. 244, 257–58 (1996).

On September 17, 2015, the Court of Appeals amended Rule 5-803, governing exceptions to the hearsay rule, to make "factual findings reported to a court pursuant to [FL section 4-505(e)]" admissible as a public record at a final protective order hearing, "provided that the parties have had a fair opportunity to review the report." *See* Md. Rule 5-803(b)(8)(iv); Court of Appeals of Maryland, *Rules Order*, at p. 25 (Sept. 17, 2015), available at http://ww.mdcourts.gov/rules/rodocs/187thro.pdf [https://perma.cc/4648-DH48]. The amended rule became effective on January 1, 2016.

Before calling her first witness, Kristina's lawyer requested an opportunity to review the FCDSS report. Matthew's attorney objected on the ground that all of the alleged acts of child abuse predated September 27, 2016. The court stated that it had "already read [the report]," and that both parties should have the opportunity to read it as well. The court agreed with Matthew's lawyer, however, that it would not consider any findings in the report concerning acts of abuse that predated September 27, 2016.

Matthew's lawyer also argued that if there was going to be "any proffer of the [FCDSS] report into evidence," she would assert her right to cross-examine the child protective services worker who had prepared it. The court responded that the "statute ha[d] just been amended on that." Kristina's counsel agreed, noting that the report was "admissible into evidence . . . as a hearsay exception," and citing Rule 5-803(b)(8)(iv). The court looked up the rule and quoted it, stating that the "factual findings reported to the court are admissible provided that the parties have had a fair opportunity to review

the report." The court added, "[s]o I'm going to give you an opportunity to review the report." Counsel replied, "Okay."

The court took a five minute recess and both parties were permitted to review the two-page FCDSS report.[13] Upon reconvening, neither party moved the FCDSS report into evidence, and no testimony was elicited about the report.

During closing argument, Kristina's attorney referred to a recommendation in the report that Matthew's visitation with the children be supervised. Matthew's lawyer objected, arguing that the FCDSS report had not been admitted into evidence. She added: "I believe the burden would have rested on [Kristina's attorney] to move the report into evidence. She pointed out that the hearsay rule would allow them to come into evidence, but there was never an attempt to enter that into evidence."

The court replied, "All right. Anything further?" Matthew did not request a further ruling on his objection.

As mentioned, in granting the petition, the court did rely upon one finding in the FCDSS report—that Matthew had "minimized" the seriousness of Kristina's broken wrist in June 2016. The court reasoned that FL section 4-505(e), coupled with Rule 5-803(b)(8)(iv), "allows the Court to review [the FCDSS report] without it being moved into evidence." The court concluded that those provisions allowed the court to "review it," even if it is not moved into evidence at the final protective order hearing.

[13] The report included a brief summary of the CPS worker's interview with R. and her interview with Matthew, by telephone with his counsel present.

The requirement in FL section 4-505(e) that a local department's report be sent to the court before a final protective order hearing, coupled with the provision of Rule 5-803(b)(8) making that report admissible without the presence of the CPS worker, are intended to permit the court and the parties to rely upon the findings of the report in effectuating the remedial purpose of the domestic violence subtitle. *See Coburn v. Coburn*, 342 Md. 244, 252 (1996) ("The purpose of the domestic abuse statute is to protect and 'aid victims of domestic abuse by providing an immediate and effective' remedy.") (quoting *Barbee v. Barbee*, 311 Md. 620, 623 (1988)). If there was any requirement to move the report into evidence at all, the failure to do so in the case at bar was a mere technical oversight. As Matthew concedes, the report was admissible in evidence. The parties were on notice that the court had read the FCDSS report[14] and were given the opportunity to read it as well. The discussion on the record made clear that the court understood that the findings in the report would be in evidence to the extent they concerned facts relevant to her decision-making. Under the circumstances, "it would exalt hypertechnicality over common sense" to hold that the court erred by relying on the findings in the FCDSS report. *State v. Faulkner*, 190 Md. App. 37, 50 (2010).

Even if we agreed with Matthew that the court erred (which we do not), any error was not prejudicial. As explained, while the court found the finding that Matthew diminished the seriousness of Kristina's broken wrist concerning, the court also ruled that

[14] Matthew did not object to the court's having done so, although he now suggests it was improper; he also did not ask the judge to recuse herself.

Matthew's statement that he would "make it hurt" was a threat that reasonably put Kristina in fear of imminent bodily harm in light of the June 2016 incident and his escalating controlling behavior. Those non-clearly erroneous independent factual findings were sufficient to sustain the court's conclusion that Kristina was entitled to a final protective order.

ORDER OF THE CIRCUIT COURT FOR FREDERICK COUNTY AFFIRMED. COSTS TO BE PAID BY THE APPELLANT.