Circuit Court for Anne Arundel County
Case No. C-02-FM-24-807074

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 13

September Term, 2024

JOHN RICHARDS

v.

KIMBERLY SLACK

Wells, C.J.,
Berger,
Wilner, Alan M.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Berger, J.

Filed: August 21, 2024

* This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for its persuasive value only if the citation conforms with Rule 1-104(a)(2)(B). Md. Rule 1-104.

This appeal arises out of the issuance of a final protective order by the Circuit Court for Anne Arundel County against appellant, John Richards ("Mr. Richards"), and in favor of appellee, Kimberly Slack ("Ms. Slack"). In September 2023, Ms. Slack filed a petition for a protective order against Mr. Richards, her ex-husband and the father of their two sons. Ms. Slack filed this petition for relief following an incident during which Mr. Richards allegedly hit the parties' eldest son, "L.J." At the circuit court hearing, L.J. testified that his father routinely physically and verbally abuses him and his younger brother, "J.R." Based on the testimony and evidence presented at the hearing, the circuit court issued a final protective order against Mr. Richards, granting Ms. Slack full custody of their two children for the duration of the protective order and denying Mr. Richards visitation rights.

Mr. Richards presents three questions for our review, which we consolidate and rephrase slightly as follows:[1]

[1] Mr. Richards's original questions presented read as follows:

> 1. Did the trial court err in issuing a final protective order where the evidence was legally insufficient to show physical "abuse" within the meaning of the domestic violence statute?
>
> 2. Did the trial court err in issuing a final protective order where the evidence was legally insufficient to show mental abuse or child neglect within the meaning of the domestic violence statute?
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> 3. Did the trial court err in granting as a remedy the transfer of custody of minor children in a protective order absent of showing that the transferee had a stable or safe home environment and where that person had significant long-term history of drug abuse and mental health issues?

I. Whether the circuit court erred in determining that Mr. Richards had abused the minor children by a preponderance of the evidence.

II. Whether the circuit court erred in issuing as a remedy a final protective order granting Ms. Slack full custody of the minor children and preventing Mr. Richards from visiting or contacting them.

For the reasons explained herein, we shall affirm.

FACTS AND PROCEDURAL HISTORY

Although the parties' child custody disputes date back to 2014, we focus our attention on the facts most relevant to the final protective order at issue in this appeal. On September 10, 2023, Ms. Slack filed a petition for a protective order on behalf of her two sons, L.J. and J.R., due to an incident that occurred on September 7, 2023 while the children were in Mr. Richards's care. At the time of the incident, L.J. was fourteen years old and J.R. was twelve years old. Both children were permanently residing with Mr. Richards who, under a 2000 Consent Order, had full custody of the children. The Consent Order also awarded Ms. Slack visitation rights subject to certain conditions.

On the day of the incident, the children had just returned home from school when Mr. Richards asked his sons to do some chores. L.J. testified that he replied to his father's instructions by shrugging his shoulders. Mr. Richards asserts that he saw L.J. raise his hands as if he were going to hit Mr. Richards and that he perceived this as a sign of disrespect. Mr. Richards slapped L.J. in the face twice, resulting in a cut the size of a quarter likely caused by Mr. Richards fingernail catching on L.J.'s cheek. Later that night,

Anne Arundel County police officers responded to a call requesting a welfare check at Mr. Richards's home.

Upon hearing about this incident, Ms. Slack filed a petition for a protective order in the Circuit Court for Anne Arundel County. The petition alleged that Mr. Richards slapped L.J. and told him that "he was going to brake [sic] his neck." It also alleged that Mr. Richards called L.J. and J.R "faggots," "pieces of shit," and "worthless." Ms. Slack also noted in the petition that Mr. Richards has a history of verbally abusing her and their sons as well as physically abusing the children. The circuit court issued a temporary protective order against Mr. Richards, awarding Ms. Slack temporary custody of the children. After multiple postponements, the circuit court held a final protective order hearing on February 8, 2024.

At the hearing, the circuit court entered into evidence two reports from the Anne Arundel County Department of Social Services ("DSS") dated September 19, 2023 and October 16, 2023. DSS conducted interviews with L.J., J.R., Ms. Slack, and Mr. Richards to discuss the incident that occurred on September 7, 2023 and to address any history of abuse. L.J. reported that his father frequently yells at and hits him and his younger brother. Both children told DSS workers that they are fearful of being returned to Mr. Richards's residence. Mr. Richards did not deny hitting L.J. on September 7, 2023 and argued that his actions constituted reasonable discipline. The September 19, 2023 DSS report ultimately concluded that there was "no credible finding of abuse as defined by Title 5

Subtitle 7 of the Family Law Article" of the Maryland Code. The report concluded that L.J. and J.R. were safe in Mr. Richards's care.

Both reports observed that the September 7, 2023 incident resulted in a cut on L.J.'s face but determined that this injury was "not significant and did not place the child at substantial risk of harm." The October 16, 2023 DSS report documented that J.R. told a guidance counselor that "he wanted to kill himself because his father hits and yells at him." The report also noted that Mr. Richards had expressed an interest in working with a counselor and receiving parenting resources. DSS ultimately recommended that the Circuit Court for Anne Arundel County determine the custody and visitation rights of the parents.

Mr. Richards, Ms. Slack, and L.J. all testified at the final protective order hearing.[2] Mr. Richards once again did not deny hitting L.J. on September 7, 2023. He argued that his actions qualified as reasonable discipline, asserting that he "barely even hit" his son. L.J. also testified about this incident, describing how his father hit him in the face twice. L.J. specified that this was not the first time his father had hit him. L.J. alleged that when Mr. Richards "gets mad," he curses at both sons or hits them, specifying that this happens "usually every day or so." He told the court that he does not believe his father's home is a "healthy home" nor a "safe place to live at." L.J. also testified that he has thought about harming himself and has threatened to harm himself. He recalled that he once told his father that he wanted to kill himself, to which Mr. Richards replied: "Good luck with that."

[2] Corporal Zachary Hill of the Anne Arundel County Police Department also testified at the hearing. Corporal Hill responded to the scene of the incident on September 7, 2023 in response to a call requesting a welfare check.

Ms. Slack testified that she filed the petition for a protective order because her sons asked her to do so "out of fear."

The trial court repeatedly emphasized throughout the hearing that the matter before the court was a domestic violence proceeding rather than a custody case. The court recognized the existence of a pending custody dispute between the parties and noted that the court's limited role in the protective order matter was to determine "whether there was an act of domestic violence" and to identify "the appropriate relief the Court should grant to protect the subject individuals." After considering all testimony and evidence presented by both parties, the court made the following factual findings:

> [T]hat September incident alone probably would not constitute unreasonable corporal punishment, but when that is factored in with the history and the testimony that I heard from [L.J.] of what is happening and transpiring in the environment in [Mr. Richards's] home, I find by a preponderance of the evidence that that certainly placed [L.J.] in fear of imminent serious bodily harm by a preponderance of the evidence.
>
> It certainly went beyond – the piling on of it went beyond reasonable corporal punishment, so I also find that it was an assault in any degree and I believe that the swearing, and the name calling and the constant yelling in that home combined with the physical, for lack of a better term, punishment, constitutes statutory abuse, mental abuse of a child and that's with respect to both children.
>
> So I do find that [Ms. Slack] has met her burden of proof to establish acts of domestic violence against these two children.

The court, therefore, issued a final protective order against Mr. Richards and in favor of Ms. Slack. The order specifies that Mr. Richards committed the following acts of abuse by a preponderance of the evidence: physical abuse of a child, placing persons eligible for

relief in fear of imminent serious bodily harm, and assault. The description of harm includes "slapping, hitting, and extensive verbal abuse." The final protective order awards Ms. Slack custody of the children for the duration of the final protective order, which is effective through February 8, 2025. The order prohibits Mr. Richards from contacting Ms. Slack, J.R., and L.J. Mr. Richards is also barred from visiting Ms. Slack's residence and the children's school.

The court noted that it did not find it appropriate to grant Mr. Richards visitation rights at the time because the boys were "too fragile." The court, however, made the following disclaimer:

> But again, that's certainly not something that I am in a position to determine for sure, but I am erring on the side of caution. But given the brevity of our proceeding today, I'm not in a position to make that judgment at this time.
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> * * *
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> So again, I know that – I'm very mindful that there's a family law case pending and this could all change as a result of the pendente lite order, but right now this is what I think needs to be done for the safety of the children.

Mr. Richards noted his timely appeal to the circuit court's issuance of the final protective order on March 1, 2024.

STANDARD OF REVIEW

Under Section 4-506 of the Family Law Article of the Maryland Code, a court may issue a final protective order if "the judge finds by a preponderance of the evidence the alleged abuse has occurred[.]" Md. Code (1984, 2019 Repl. Vol.) § 4-506(c)(1)(ii) of the

Family Law Article ("FL"). The petitioner bears the burden to establish by a preponderance of the evidence that the alleged abuse has occurred. *Piper v. Layman*, 125 Md. App. 745, 754 (1999). "If the court finds that the petitioner has met the burden, it may issue a protective 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)). On review of the issuance of a final protective order, an appellate court "accept[s] the facts as found by the hearing court unless it is shown that its findings are clearly erroneous." *Id. See also* Md. Rule 8-131(c) (providing that this Court "will not set aside the judgment of the trial court on the evidence unless clearly erroneous").

A trial court's factual findings are not clearly erroneous so long as they are supported by substantial evidence. *Innerbichler v. Innerbichler*, 132 Md. App. 207, 230 (2000). *See also Mills v. Mills*, 178 Md. App. 728, 734–35 (2008) ("[I]f substantial evidence was presented to support the trial court's determination, it is not clearly erroneous and cannot be disturbed."). We are deferential to the factual findings of the trial court, which had the "opportunity to gauge and observe the witnesses' behavior and testimony" throughout the protective order proceeding. *Barton v. Hirshberg*, 137 Md. App. 1, 21 (2001) (quoting *Ricker*, *supra*, 142 Md. App. at 592). For this reason, we also "leave the determination of credibility to the trial court[.]" *Id.* This Court considers the evidence produced at trial in the light most favorable to the prevailing party. *Mills v. Mills*, 178 Md. App. 728, 734–35 (2008). "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." *Piper*, *supra*, 125 Md. App. at 745–55.

DISCUSSION

Mr. Richards raises two arguments on appeal. First, he argues that the evidence presented at the final protective order hearing was insufficient to establish that he physically or mentally abused his sons by a preponderance of the evidence. In doing so, Mr. Richards asserts that his behavior during the September 7, 2023 incident qualifies as reasonable corporal punishment. Second, Mr. Richards contends that the trial court erred in granting a final protective order under which Ms. Slack has full custody of the children and Mr. Richards has no visitation rights. He claims that the terms of the protective order are excessive and radical and contends that the court erred in failing to consider Ms. Slack's ability to care for the children.

For the reasons described below, we conclude that the trial court did not err in finding that the alleged abuse occurred by a preponderance of the evidence. Furthermore, we conclude that the court's remedy is reasonable to fulfill the purpose of the domestic violence statute, which is to insulate victims from further abuse.[3]

[3] In reaching this conclusion, we decline to consider two documents referenced by Ms. Slack in her brief: an Anne Arundel County police report filed following the September 7, 2023 incident at Mr. Richards's home and a "Child Advocate Assessment." The circuit court excluded the police report as inadmissible hearsay at the protective order hearing. Furthermore, the Child Advocate Assessment seems to have been developed for the parties' pending custody case. Ms. Slack never sought to introduce this assessment into evidence at the protective order hearing. In fact, it appears the assessment was not created until after the hearing took place. Neither of these documents, therefore, are appropriate for our consideration on appeal.

I. The trial court did not err in concluding that Mr. Richards committed the alleged abuse by a preponderance of the evidence.

Mr. Richards primarily contends that there was insufficient evidence to establish that the alleged abuse occurred by a preponderance of the evidence. Section 4-501(b)(1) of the Family Law Article of the Maryland Code defines "abuse" as follows:

> (i) an act that causes serious bodily harm;
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> (ii) an act that places a person eligible for relief in fear of imminent serious bodily harm;
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> (iii) assault in any degree;
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> (iv) rape or sexual offense under § 3-303, § 3-304, § 3-307, or § 3-308 of the Criminal Law Article or attempted rape or sexual offense in any degree;
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> (v) false imprisonment;
>
> (vi) stalking under § 3-802 of the Criminal Law Article; or
>
> (vii) revenge porn under § 3-809 of the Criminal Law Article.

FL § 4-501(b)(1).

The Family Law Article also specifies that "[i]f 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." FL § 4-501(b)(2)(i). Section 5-701 defines abuse of a child as "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" by a parent. FL § 5-701(b)(1)(i)(1). Of particular importance to this matter is the exclusion provided in Section 4-501(b)(2)(ii) of the Family Law Article, which provides that:

> Nothing in this subtitle shall be construed to prohibit reasonable punishment, including reasonable corporal

> punishment, in light of the age and condition of the child, from being performed by a parent or stepparent of the child.

FL § 4-501(b)(2)(ii). *See also* FL § 5-701(b)(2) (providing that child abuse "does not include the physical injury of a child by accidental means").

On appeal, Mr. Richards does not deny hitting L.J. on September 7, 2023. He contends that his conduct on September 7 involved a "moderate use of force in an exercise of domestic authority, consistent with parental privilege." Accordingly, he asserts that hitting L.J. was a reasonable form of corporal punishment that did not "extend beyond the bounds of moderation" and, therefore, did not constitute physical abuse of a child. We recognize that "[r]easonable corporal punishment, by definition, is not child abuse." *Charles Cnty. Dep't of Soc. Servs. v. Vann*, 382 Md. 286, 303 (2004). Whether corporal punishment is reasonable "depends not simply on the misbehavior of the child and the amount of force used in the punishment from the parent's perspective, but also on the physical and mental maturity of the child[.]" *Id.* at 299.

Even if this Court were to assume *arguendo* that Mr. Richards's action during the September 7 incident -- slapping his elder son in the face twice -- was reasonable corporal punishment, we recognize that the circuit court did not base its finding of physical abuse solely on that incident. The circuit court specified that it based its finding of abuse on the "history . . . of what is happening and transpiring" in Mr. Richards's home, as revealed by L.J.'s testimony at the final protective order hearing. L.J.'s testimony provided substantial evidence of a history of abuse and supported the circuit court's finding that Mr. Richards's

behavior placed L.J. in fear of imminent bodily harm. We, therefore, conclude that the trial court did not err in finding that the alleged abuse occurred.

A. L.J.'s testimony presented substantial evidence of a history of abuse sufficient to support the trial court's factual findings.

The circuit court concluded that, although the September 7, 2023 incident alone may not give rise to a finding of physical abuse, Mr. Richards's prior actions support such a finding. The court made its finding of abuse based on that incident as well as the "history and the testimony" that L.J. provided, noting that the "piling on" of Mr. Richards's actions towards the children amounts to abuse under the domestic violence statute. Mr. Richards argues on appeal that there was insufficient evidence to support such a finding. In doing so, he emphasizes that there was no testimony of any other specific acts of abuse other than the incident that occurred on September 7, 2023 in Mr. Richards's home.

There is no doubt that "[p]rior abuse and the nature and severity of abuse may be relevant to certain types of relief" available under the Family Law Article's domestic violence statute. *C.M. v. J.M.*, 258 Md. App. 40, 69 (2023) (quoting *Katsenelenbogen v. Katsenelenbogen*, 365 Md. 122, 132 (2001)). As the Supreme Court of Maryland has recognized:

> In determining whether to issue a protective order, the judge should consider not only evidence of the most recent incident of abuse, but prior incidents which may tend to show a pattern of abuse. Allegations of past abuse provide the court with additional evidence that may be relevant in assessing the seriousness of the abuse and determining appropriate remedies . . . . Admitting prior acts of abuse aids in assessing the need for immediate and future protection. The fact that

> there is a history of prior abusive acts implies that there is a stronger likelihood of future abuse.

Coburn v. Coburn, 342 Md. 244, 257–58 (1996).

L.J. testified about Mr. Richards's prior acts of abuse at the protective order hearing. He revealed that his father has a history of physically abusing him and his brother, reporting that he hits them "when he gets mad" and specifying that this occurs "usually every day or so." He stated twice during the hearing that he does not feel safe around his father and that he does not think his father's home is "a healthy home." The DSS reports admitted into evidence at the protective order hearing similarly report that L.J. is "fearful of returning to his father's residence" because he "hit[s] them if they do not do things when or how it should be done."

Mr. Richards argues this testimony is insufficient to support the trial court's finding because L.J. failed to provide details regarding specific prior incidents of abuse separate from the September 7 incident. Notably, however, Mr. Richards fails to cite to any case law or statute to support this argument. Indeed, Mr. Richards fails to present any applicable law providing that a court can make a finding of abuse for purposes of issuing a protective order only if there is sufficient evidence of *specific* prior acts at specific dates and times. L.J. presented testimony that him and his brother suffer physical abuse at the hands of their father nearly "every day or so." Mr. Richards is unable to point to any case law to support his argument that such testimony is insufficient to support a finding abuse,

Critically, it is "not our role, as an appellate court, to second-guess the trial judge's assessment of a witness's credibility." *Gizzo v. Gerstman*, 245 Md. App. 168, 203 (2020).

See also Md. Rule 8-131(c) (providing that this Court "will give due regard to the opportunity of the trial court to judge the credibility of the witnesses"). The circuit court found L.J.'s testimony about Mr. Richards's prior abusive acts to be credible. The circuit court relied on this testimony and the other evidence presented at the hearing to reach its finding of physical abuse. We cannot conclude that this finding, based on all of the evidence and the trial court's credibility determinations, is clear error.

B. The trial court relied on substantial evidence in finding that Mr. Richards's actions placed L.J. in fear of imminent bodily harm.

Mr. Richards also contends that the circuit court erred in concluding that he had physically abused his sons because L.J. did not provide "explicit testimony" that he fears serious bodily harm by his father. Notably, neither the statutory definition of abuse nor the domestic violence statute require such "explicit testimony." The statutes merely provide that putting someone in fear of imminent serious bodily harm is a form of abuse and can serve as the basis for the issuance of a protective order if a judge finds that such abuse has occurred by a preponderance of the evidence. We conclude that the trial court relied on substantial evidence in finding that Mr. Richards's actions placed L.J. in fear of imminent bodily harm.

At the final protective order hearing, L.J. testified that he thinks his father's home is "not a safe place to live." L.J. explained that although he had a "bond" with his father when he was younger, as he has grown he has started feeling like he "didn't want to be around" Mr. Richards and "didn't feel safe around him either." He also testified that he believes Mr. Richards will abuse him in the future if returned to his care. The September

19, 2023 DSS report also provides details about L.J.'s fear of his father. L.J. told a DSS worker that he was afraid of returning to Mr. Richards's home because "he believes that his father may try to retaliate against him or his brother for getting arrested when the police were called to the home" on September 7, 2023.

The circuit court ultimately found L.J.'s testimony to be credible and concluded that Mr. Richards's actions placed L.J. in fear of imminent serious bodily harm. In doing so, the court properly relied on the Supreme Court of Maryland's holding in *Katsenelenbogen*, *supra*, 365 Md. at 139. In *Katsenelenbogen*, the Supreme Court determined:

> [T]he reasonableness of an asserted fear . . . must be viewed from the perspective of the particular victim. Any special vulnerability or dependence by the victim, by virtue of physical, mental, or emotional condition or impairment, also must be taken into account.

Id. The circuit court specified at the protective order hearing that it based its findings on the "victim's history" and recognized that "what might seem non-threatening to one person would be extremely threatening to another person given the second person's history."

We conclude that the circuit court properly applied *Katsenelenbogen* in determining whether there was sufficient evidence to find that Mr. Richards placed L.J. in fear of imminent bodily harm. Based on all of the evidence presented at the protective order hearing, we conclude that the circuit court did not err in finding that Mr. Richards's actions placed L.J. in fear of imminent serious bodily harm by a preponderance of the evidence.

C. There is substantial evidence to support the circuit court's finding of mental abuse.

Mr. Richards observes, and this Court similarly recognizes, that although the final protective order did not specify that Mr. Richard mentally abused his sons by a preponderance of the evidence, the trial court stated the following at the conclusion of the protective order hearing:

> I believe that the swearing, and the name calling and the constant yelling in that home combined with the physical, for lack of a better term, punishment, constitutes statutory abuse, mental abuse of a child and that's with respect to both children.

Section 5-701 of the Family Law Article of the Maryland Code defines mental abuse of a child as "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" by a parent. FL § 5-701(b)(1)(i)(1). Mr. Richards contends that there is insufficient evidence to support a finding of mental injury. We disagree.

The circuit court admitted into evidence the DSS report dated October 16, 2023, which reported the J.R. had told a counselor that he has struggled with suicidal thoughts. L.J. also testified at the final protective order hearing that he has thought about harming himself and has threatened to harm himself. L.J. detailed an interaction with Mr. Richards during which he told his father that he wanted to kill himself, to which Mr. Richards replied: "Good luck with that." In our view, the fact that both sons have struggled with either suicidal ideation or thoughts of self-harm serves as substantial evidence of mental

injury. The circuit court, therefore, did not err in concluding that Mr. Richards's actions constituted mental abuse of a child.

As this Court has previously recognized, "the clearly erroneous standard is a deferential one, giving great weight to the trial court's findings." *Gizzo*, *supra*, 245 Md. App. at 200 (quoting *Viamonte v. Viamonte*, 131 Md. App. 151, 157 (2000)) (internal quotation marks omitted). Based on all of the evidence presented at the final protective order hearing, we cannot conclude that the trial court's findings of abuse are clearly erroneous.

II. The terms of the final protective order do not constitute an excessive or radical remedy and were reasonable to ensure the immediate safety of the parties' minor children.

In addition to challenging the sufficiency of evidence, Mr. Richards contends that the terms of the final protective order impose an excessive remedy. Under the terms of a previous protective order issued against Ms. Slack and the terms of the 2020 Consent Order, L.J. and J.R. have been residing with their father since 2018. The 2020 Consent Order awarded Mr. Richards sole custody of the children and conferred visitation rights to Ms. Slack, subject to certain limitations. The final protective order issued by the Circuit Court of Anne Arundel County on February 8, 2024 awards Ms. Slack full custody of the children for the duration of the protective order and prohibits Mr. Richards from contacting his sons or visiting them at their home or their school. Mr. Richards suggests that such terms are "excessive" and contends that the circuit court exceeded its authority under the protective order statute.

There is no doubt that circuit courts are authorized to temporarily alter parental custody arrangements through the issuance of a final protective order. Section 4-506 of the Family Law Article of the Maryland Code sets forth various remedies that can be included in the terms of a final protective order, including "award[ing] temporary custody of a minor child" as well as "restrict[ing] visitation" or "deny[ing] visitation entirely, as needed to guard the safety of any person eligible for relief[.]" FL § 4-506(d). *See also Katsenelenbogen*, *supra*, 365 Md. at 130 (noting that a protective order may result in "temporary loss of custody"). Circuit courts, therefore, may exercise broad discretion in determining which available remedies are most appropriate to protect victims from further abuse based on all of the facts and circumstances of the case.

Moreover, we recognize that the issuance of a protective order may "have consequences in other litigation." *Id.* at 137. Nevertheless, such consequences are not the focus of the circuit court in considering a petition for a protective order. The Supreme Court of Maryland has held:

> Living arrangements established as the result of a protective order may have relevance in determining custody, use and possession, and support in subsequent litigation. That is *not* the concern of the court in fashioning appropriate relief in a domestic violence case, however. The concern there is to do what is reasonably necessary--*no more and no less*--to assure the safety and well-being of those entitled to relief.

Id. (emphasis in original). Indeed, the "purpose of the domestic abuse statute is to protect and aid victims of domestic abuse by providing an *immediate and effective* remedy."

Coburn, *supra*, 342 Md. at 252 (quoting *Barbee v. Barbee*, 311 Md. 620, 623 (1988)) (internal quotation marks omitted) (emphasis added).

The circuit court properly explained its limited scope throughout the protective order hearing. At the beginning of the hearing, the court clarified that the hearing was a "domestic violence" proceeding rather than a custody case. The judge noted that the purpose of the hearing was to determine "whether an act of domestic violence" took place and, if so, to identify "the appropriate relief the court should grant to protect the subject individuals." The court also repeatedly stated throughout the hearing that it was aware and mindful of the parties' pending custody modification case. The circuit court further elaborated on its limited scope when explaining the court's decision to deny Mr. Richards visitation rights under the terms of the protective order. The court stated:

> [A]gain, that's certainly not something that I am in the position to determine for sure, but I am erring on the side of caution. But given the brevity of our proceeding today, I'm not in a position to make that judgment at this time.

In our view, the circuit court's approach and the terms of the final protective order properly served the purpose of "prevent[ing] further harm to the victim[s]." *Coburn*, *supra*, 342 Md. at 252. Based on its finding of abuse, the circuit court issued a protective order that would effectively insulate L.J. and J.R. from any further harm posed by Mr. Richards for the duration of the protective order. Mr. Richards argues that the circuit court failed to consider Ms. Slack's parental fitness, emphasizing Ms. Slack's history of drug abuse. Mr. Richards contends that the circuit court failed to consider and

did not hear any testimony regarding Ms. Slack's employment, ability to provide for the children, or the stability of her home environment.

This type of testimony is certainly important for a court to analyze when considering a motion to modify custody. It is well-established that "overarching all of the contentions in disputes concerning custody or visitation is the best interest of the children." *Wagner v. Wagner*, 109 Md. App. 1, 11 (1996) (quoting *Hixon v. Buchberger*, 306 Md. 72, 83 (1986)). We have no doubt that the circuit court will do so in the parties' pending custody modification case. The role of the circuit court in this matter, however, was to make a determination based on the evidence presented on how best to protect the children from future abuse. We decline to conclude that the trial court's finding of abuse was clear error and hold that the trial court did not abuse its discretion in issuing the final protective order. For these reasons, we affirm.

JUDGMENT OF THE CIRCUIT COURT FOR ANNE ARUNDEL COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.