

Circuit Court for Montgomery County
Case Nos.: C-15-FM-24-807972 & 808006

UNREPORTED
IN THE APPELLATE COURT
OF MARYLAND*

Nos. 439 & 442

September Term, 2024

LARRY VINES, JR.

V.

JAYSHREE SURAGE

Berger,
Leahy,
Zarnoch, Robert A.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Zarnoch, J.

Filed: November 22, 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 to Rule 1-104(a)(2)(B).

The Circuit Court for Montgomery County denied a final protective order requested by Larry Vines, Jr. (“Father”) and granted a final protective order requested by Jayshree Surage (“Mother”).¹ In granting the final protective order to Mother, the circuit court gave her, among other things, temporary custody of the parties’ minor child. Father appeals, arguing that the circuit court erred in granting Mother a final protective order because: 1) Mother’s testimony was not credible as to allegations of domestic violence by Father, and 2) the grant of temporary custody of the parties’ child to Mother was excessive. For the following reasons, we shall affirm the judgment.

FACTS AND LEGAL PROCEEDINGS

The parties are the unmarried parents of a child (“Child”) born to them on July 21, 2022. The parties ended their romantic relationship in January 2024, and within a couple of months separately filed custody suits for the Child. At that time, Mother and Father were living separately, and the Child was residing with Mother. Mother also had her two school age children from a previous relationship living with her.

On March 22, 2024, Father filed two petitions in district court: a petition for a temporary protective order (“TPO”), alleging mental injury to a child by Mother, and an emergency petition for an involuntary evaluation of Mother. The district court granted both petitions.

¹ At all relevant times during this litigation, Father has proceeded pro se and Mother had been represented by counsel. The Maryland Supreme Court has stated that, although we shall liberally construe the contents of pleadings filed by pro se litigants, unrepresented litigants are subject to the same rules regarding the law, particularly, reviewability and waiver, as those represented by counsel. *Simms v. State*, 409 Md. 722, 731 n.9 (2009).

Later that evening, Father went to Mother's house and an incident occurred involving Father, Mother, and Mother's older child. After the incident, the police came to Mother's house and executed Father's petitions. The police removed Child from Mother, placed Child in Father's custody, and took Mother into custody to undergo an emergency evaluation.

The next day, after Mother was promptly released following a psychiatric evaluation, Mother filed a petition for a TPO alleging domestic abuse by Father. In her petition, Mother stated that the night before, Father had assaulted her and her older child by hitting them as he tried to kick in their back door, and that Father had stalked, shoved, and caused mental injury to her and her daughter. She requested protection for herself and her three children, specifically requesting the court to prohibit Father from having any contact with her and her three children and to grant her custody of Child. The district court granted her petition and returned the Child to her care.

Mother's and Father's TPO actions were transferred to the circuit court and set together for a final protective order hearing. Both TPOs were extended through April 11, 2024.

On April 11, 2024, the Circuit Court for Montgomery County held a final protective order hearing on the petitions. Testifying at the hearing, among others, were both parents and Mother's older child. The court heard evidence on Father's petition first. Father testified that in February 2024, while Child, who was not quite two years old, was in Mother's care, Mother texted Father that she wanted to commit suicide. Father did not

produce evidence of those texts. Finding that Father had failed to prove by a preponderance of the evidence that the Child had suffered mental injury, the court denied Father’s petition.

The court then heard evidence on Mother’s petition. Mother testified that the week prior to the incident at her house, she saw Father’s car on her street several times, which made her “[v]ery uncomfortable.” On the night of the incident, she saw what she suspected was Father’s car parked down the street from her home. She told her older daughter to keep the door of their home locked, and then she walked down the street toward the car. As she realized it was Father’s car, it sped toward her driveway and then stopped. Father exited the car and “powerwalk[ed]” toward the back door of her home, even though he had received written notice to stay away from her home. Mother ran toward her home, and she and Father arrived at the back door at the same time. As they both attempted to get inside, she slipped in front of him and into the home through the door, which she and her daughter then attempted to close behind her. Although Father kicked the bottom of the door and tried to force his way inside, Mother and her daughter eventually managed to close the door. The force of Father’s kicks caused the door to reverberate and hit both Mother and daughter. Mother introduced pictures of “scuff” marks on the bottom of the back door and bruises on her wrist from trying to keep the door closed. Mother’s daughter testified similarly to Mother’s testimony.

The circuit court found daughter’s testimony “very credible.” The court ruled that Father had committed domestic violence by a preponderance of the evidence and granted Mother a final protective order. Father was ordered, among other things, not to contact Mother, other than to facilitate visitation of their Child by court order, and not to go to the

schools of Mother’s older two children. The order also awarded Mother custody of the Child. The final protective order was effective for one year.

Father timely appealed.

DISCUSSION

Father argues that the circuit court erred in granting Mother a final protective order for two reasons. First, the circuit court erred in finding Mother’s testimony credible because, according to Father, her testimony was “false and retaliatory in nature.” To support his argument, he asserts that he was subsequently found not guilty of assault and attempted burglary as to the incident at Mother’s home. Second, Father argues that granting custody of their Child to Mother was excessive because, in her protective order petition, Mother never alleged that she wanted protection for the Child or that the Child was a victim, and the parties’ custody case regarding the Child was still pending in the circuit court. Mother responds that the circuit court did not err in granting her a final protective order, as it found her and her daughter’s testimony credible. Mother argues that Father’s argument as to custody is moot because he was granted supervised access to Child pursuant to their custody case.²

² In May 2024, the circuit court issued an order granting Father supervised access with the Child. About five months later, a magistrate issued a report recommending that Mother have sole legal and physical custody of Child and Father to attend a twenty-two-week anger management program and to have continued supervised access to Child. On November 14, 2024, the circuit court entered a final order awarding, among other things, primary physical custody of Child to Mother, with reasonable access to Father, and joint legal custody to the parties with tie-breaking authority to Mother. *See Vines v. Surage*, No. C-15-FM-24-001608.

Law

When an action is tried without a jury, an appellate court will review the case on both the law and evidence. Md. Rule 8-131(c). We will not set aside a circuit court’s judgment on the evidence unless clearly erroneous, giving “due regard” to the opportunity of the circuit court to judge the credibility of the witness(es). *Id.* We view the evidence in the light most favorable to the party who prevailed at trial, and we resolve all evidentiary conflicts in their favor. *Brault Graham, LLC v. Law Offs. of Peter G. Angelos, P.C.*, 211 Md. App. 638, 660, *cert. denied*, 434 Md. 312 (2013). In contrast, we review whether “the [trial] court’s conclusions are legally correct under a *de novo* standard of review.” *Nouri v. Dadgar*, 245 Md. App. 324, 343 (2020) (quotation marks and citations omitted).

The party seeking a final protective order must show “by a preponderance of the evidence that the alleged abuse has occurred[.]” Md. Code Ann., Family Law (“FL”) Article, § 4-506(c)(1)(ii). The section defines “abuse” expansively to include: acts that cause serious bodily harm or place a person in fear of imminent serious bodily harm; assault in any degree; rape or sexual offenses; attempted rape or sexual offenses; false imprisonment; stalking; or revenge porn. FL § 4-501(b). In assessing the credibility of the witnesses who testify at a final protective order hearing, the circuit court is “entitled to accept – or reject – all, part, or none of” their testimony, “whether that testimony was or was not contradicted or corroborated by any other evidence.” *Omayaka v. Omayaka*, 417 Md. 643, 659 (2011) (emphasis omitted). 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).

To support Father’s argument that we should reverse the circuit court’s grant of Mother’s protective order, Father argues that the testimony of Mother and her daughter was not credible. We can quickly dispose of this argument. As stated above, a circuit court is entitled to accept or reject some or all of a witness’s testimony. Credibility is within the province of the circuit court, and we will not second guess the circuit court’s assessment in this regard. Father also argues that, because he was later found not guilty of several criminal acts related to the incident at Mother’s home, the circuit court erred in ruling that he engaged in domestic violence. His argument is flawed for several reasons.

First, contrary to Father’s assertion, he was not found “not guilty” of the criminal charges later filed regarding the incident, rather, he entered a plea agreement. Specifically, Father plead guilty to trespass, and the remaining charges of assault in the second degree and attempted burglary were nolle prossed. *See* D-06-CR-24-002213. A nolle prosequi is not the equivalent of a not guilty finding. *See State v. Simms*, 456 Md. 551, 564 (2017) (“[W]hile a nolle prosequi discharges the defendant on the charging document or count which was nolle prossed, and while it is a bar to any further prosecution under *that* charging document or count, a nolle prosequi is *not* an acquittal or pardon of the underlying offense and does not preclude a prosecution for the same offense under a different charging document or count.” (quotation marks and citation omitted; emphasis in original)).

Second, the standards in a criminal and civil trial are different. Civil cases generally use the lesser “preponderance of the evidence” standard, and criminal cases use the higher “beyond a reasonable doubt” standard. *See* FL § 4-506(c)(1)(ii) (stating a judge may grant a final protective order if it finds by a preponderance of the evidence that the alleged abuse

has occurred); *Coleman v. Anne Arundel Cnty. Police Dep’t*, 369 Md. 108, 125 n.16 (2002) (stating that to meet one’s burden of proof by a preponderance of the evidence, one must simply present sufficient evidence that something is more likely so than not so); *Ruffin v. State*, 394 Md. 355, 363 (2006) (stating that a defendant may be convicted of a criminal offense only upon proof beyond a reasonable doubt). *Cf. Att’y Grievance Comm’n of Md. v. Marcalus*, 414 Md. 501, 521 (2010) (discussing the difference of the standard of proof in a criminal and a civil trial).

Third, and most importantly, evidence of Father’s plea agreement was not before the circuit court as Father entered into the plea agreement *after* the hearing and the court’s rulings on the protective orders. Therefore, under the circumstances before us and the applicable burdens of proof, we reject Father’s argument that the circuit court erred in finding that Father engaged in domestic violence.

As to Father’s argument that the circuit court erred in granting custody of the Child to Mother, we again reject his argument.³ Contrary to Father’s assertions, Mother did state in her petition for a temporary protective order and did argue before the circuit court in her request for a final protective order that she wanted protection for herself and each of the children living in her home, which included Child. Moreover, pursuant to FL § 4-506(d)(7), a circuit court “may . . . award temporary custody of a minor child” in a final protective

³ Mother responds to this argument by stating that this argument is moot because Father was granted visitation in the parties’ custody litigation. Although the custody order will supersede the protective order thereby making moot that portion of the protective order that concerns custody, the protective order itself is not rendered moot because it can have long term collateral effects. *Piper v. Layman*, 125 Md. App. 745, 752-53 (1999).

order. We recognize that the issuance of a protective order may “have consequences in other litigation[,]” but such consequences are not the circuit court’s focus when considering a petition for a protective order. *Katsenelenbogen v. Katsenelenbogen*, 365 Md. 122, 130, 137 (2001) (“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” because the concern in a protective order case is “to do what is reasonably necessary – *no more and no less* – to assure the safety and well-being of those entitled to relief.” (emphasis in original)). Accordingly, we find no abuse of discretion in the circuit court’s issuance of a final protective order, which included an award of temporary custody of the Child to Mother.

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