

Circuit Court for Montgomery County
Case No.: C-15-FM-23-003758

UNREPORTED
IN THE APPELLATE COURT
OF MARYLAND*

No. 516

September Term, 2024

V.O.

v.

L.O.

Arthur,
Ripken,
Eyler, Deborah S.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Eyler, Deborah S., J.

Filed: November 26, 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).

In a still pending divorce case, the Circuit Court for Montgomery County entered an order granting L.O.¹ (“Mother”), the appellee,² sole legal and primary physical custody of the two children she shares with her husband, V.O. (“Father”), the appellant, and granting Father supervised visitation with the children (“the Custody Order”). Eleven days later, Father filed what he called a motion to alter or amend the Custody Order, which in fact was a motion to revise under Rule 2-535(a). The circuit court denied the motion.

Father noted an appeal, presenting two issues, only one of which properly is before us for decision.³ We rephrase that issue as follows:

Did the circuit court abuse its discretion by denying Father’s motion to revise the Custody Order?

As we shall explain, the circuit court did not abuse its discretion in denying Father’s motion to revise. Accordingly, we shall affirm the order of the circuit court.

¹ To protect the identities of the minor children, we have replaced all proper names with initials. Additionally, we shall use “Mother” and “Father” when referring to the parties.

² Mother did not file a brief in this Court.

³ As mentioned, Father filed a motion to revise more than ten days after the entry of the Custody Order. He noted an appeal within thirty days after the entry of the order denying that motion but not within thirty days after the entry of the Custody Order. Consequently, this Court issued an order limiting the scope of Father’s appeal to a challenge to the denial of the post-judgment motion and a subsequent order suspending visitation between Father and the children.

In his informal brief, Father concedes that his challenge to the order suspending his visitation has been rendered moot by the entry of a subsequent order reinstating his visitation. Consequently, the sole issue before us concerns the court’s denial of Father’s post-judgment motion.

FACTS AND PROCEEDINGS

Mother and Father married in June 2013. They have two daughters, An., age 10, and At., age 6. In August 2022, Mother and the children vacated the marital home in Milford, Delaware, and moved in with Mother’s parents, in Burtonsville, Maryland.

A. The Divorce Complaint and Petition for Protection from Abuse

In June 2023, in the Circuit Court for Montgomery County, Mother filed a complaint for limited divorce or, in the alternative, absolute divorce. As pertinent, she alleged that during the marriage, Father had physically abused the children and had “physically, sexually, and verbally abused” her. She asked the court to award her sole legal and primary physical custody of the children and to order Father to pay child support.

Meanwhile, prior to filing the divorce complaint, Mother filed a petition for protection from domestic violence and child abuse on behalf of herself and the children, in the District Court of Maryland for Montgomery County. On May 23, 2023, the district court issued a temporary protective order.

On July 19, 2023, the district court held a final protective order hearing. Father appeared with counsel. Without admitting the allegations and without a judicial finding of abuse, Father consented to the entry of a final protective order. The court granted Mother’s request that the order be effective for a one-year period (through July 19, 2024), and ordered Father not to have contact with Mother or the children.

In September 2023, Father answered the complaint for divorce and filed a countercomplaint for absolute divorce. He denied abusing the children, alleged that Mother

was engaging in parental alienation, and asked the court to grant joint legal custody, with tie-breaking authority vested in him, and shared physical custody.

The circuit court bifurcated the divorce case, with the issues of custody, visitation, and child support to be decided in phase one and marital property and grounds for divorce to be decided in phase two.

In January 2024, the court entered a *pendente lite* order modifying the final protective order to permit Father supervised access with the children every other weekend at a visitation center.

B. The Merits Hearing

On March 19 and 20, 2024, the court held a merits hearing on custody, visitation, and child support. Mother represented herself and Father was represented by counsel. In her case, Mother testified and called her mother (“Grandmother”) and Father as witnesses. In Father’s case, he testified on his own behalf.

Grandmother testified about her positive observations of Mother’s parenting and her negative opinion of Father’s parenting. She characterized Mother as caring, calm, and loving with the children and Father as “easily . . . annoyed” and selfish.

In Mother’s case, Father testified that he had most recently seen the children three days earlier, on March 16, 2024, for supervised visitation under the terms of the *pendente lite* order. Before then, he had not seen the children since December 7, 2022. He explained that he did not see them more often because of the distance between where he was living in Delaware and Mother’s parents’ home in Montgomery County. Also, he did not see them while he was not permitted to under the terms of the temporary and final protective orders.

Father acknowledged that on one occasion after Mother and the children moved out, but before the entry of the temporary protective order in May 2023, he drove from Delaware to Mother's parents' home very early in the morning, took the Lexus SUV that Mother had been using, and in its place left her an older-model Toyota Camry. He did not tell Mother he was coming or arrange to see the children.

Father denied that he had ever hit An., that he had failed to feed At. on one occasion when Mother was recovering from surgery, and that he ever had forced himself on Mother sexually.

Mother testified that her marriage to Father was “an abusive relationship[.]” She testified that his abuse of her was “mostly sexual abuse” and that he raped her during the marriage. Father began hitting and pinching An. when she was around two or three years old. Mother described an incident that took place in July 2022, when An. was seven years old. Mother was out of the house when she received a text from Father saying he was extremely angry because An. had sprayed half a bottle of perfume. When Mother got home, she found Father in the bathroom with An., hitting her. An.'s eye swelled up. Mother introduced into evidence three photographs she had taken of An.'s face that day that showed she had a swollen right eye.

On another occasion that same month, An. and At. came into Mother and Father's bedroom early in the morning and Father told them to leave. When An. did not move fast enough in response to Father's directive, he began “pounding her.” Mother screamed at An. to run into her room and lock the door. Also in July 2022, Father threw An. to the floor in front of Mother, causing An.'s ear to bleed.

Mother further testified that in July 2022, she underwent outpatient surgery. Father drove her to the surgical center and brought her home, where she went to sleep. Late that night, Mother noticed that At., then age 3, was wandering around the house. Upon questioning At., Mother learned that she had not eaten all day and was hungry. Father told Mother that he had made breakfast for At. but she had not wanted to eat what he had prepared. For that reason, he did not give her anything else to eat for the rest of the day.

In his case, Father testified that when Mother became angry, she was destructive, throwing objects and breaking things. He and Mother had many arguments during the marriage, and he was the one who “actually got hit in the marriage.” He discussed an incident in 2017, when he called 911 because Mother was breaking plates and holding a knife.

Father described his relationship with his children prior to the parties’ separation as loving and active. He denied the specific incidents of abuse that Mother had testified about. He explained that when An. misbehaved, he used time outs. When At. misbehaved, he intervened directly because she was too young to understand a time out. In contrast, he observed Mother shout and scream at the children when they misbehaved and hit them in the head if they moved when she was fixing their hair.

Father acknowledged that he did not travel to Montgomery County to see his children between August 2022, when Mother and the children moved out, and May 2023, when the temporary protective order was entered. He did see them once, in December 2022, when Mother brought them to the marital home. He spoke to them by telephone a few times during that nearly ten-month stretch.

Father agreed that Mother should maintain primary physical custody of the children but sought unsupervised access every other weekend from Friday through Sunday, as well as some holidays and vacation time. He asked to share legal custody with Mother and to be given tiebreaking authority if they could not reach agreement on important decisions affecting the children.

C. The Memorandum Opinion

On April 2, 2024, the circuit court issued a memorandum opinion and order. After summarizing the testimony it found relevant, the court analyzed the best interest factors set out in *Montgomery County Department of Social Services v. Sanders*, 38 Md. App. 406 (1978), and *Taylor v. Taylor*, 306 Md. 290 (1986). We discuss the factors pertinent to our analysis.

Fitness of the Parents

The court found, based upon photographs of An. admitted into evidence and Mother’s and Father’s testimony, including demeanor-based credibility assessments, that Father had “committed much of the abuse as described by Mother.” The court observed that Mother had “overstate[d] how often the abuse occurred[,]” but found her testimony to be credible with respect to the three specific incidents of abuse against An. in July 2022. The court found that Father had hit An. because she sprayed perfume, that he had “pounded her” because she did not leave her parents’ bedroom quickly enough, and that he had “thr[own] [An.] to the ground[,]” causing her ear to bleed. The court also found that Father had neglected At. that same month by failing to feed her while Mother was recovering from surgery.

The court rejected Father’s testimony that Mother had hit the children, stating that it “d[id] not believe Father’s testimony on these points.”

Based on its findings that Father had abused An. and had neglected At., and that Mother had not abused or neglected the children, the court concluded that Mother was a fit person to have custody and that Father was not a fit person to have custody. It further determined that Md. Code (1999, 2019 Repl. Vol.), Fam. Law §§ 9-101 and 9-101.1⁴ applied and would govern Father’s access to the children.

Character and Reputation of the Parties

The court found that Father had “a severe problem with anger and violence” and that his testimony characterizing himself as the “peacemaker” was “simply not true.”

⁴ Fam. Law § 9-101 provides:

(a) In any custody or visitation proceeding, if the court has reasonable grounds to believe that a child has been abused or neglected by a party to the proceeding, the court shall determine whether abuse or neglect is likely to occur if custody or visitation rights are granted to the party.

(b) Unless the court specifically finds that there is no likelihood of further child abuse or neglect by the party, the court shall deny custody or visitation rights to that party, except that the court may approve a supervised visitation arrangement that assures the safety and the physiological, psychological, and emotional well-being of the child.

Relatedly, Fam. Law § 9-101.1 mandates that the court consider evidence of abuse or neglect of a party’s spouse or other children in the household when deciding issues of custody or visitation and that it “make arrangements for custody or visitation that best protect . . . the child who is the subject of the proceeding” and any other victim of abuse.

Desire of the Natural Parents and Agreements Between the Parties

The parties agreed that Mother should have primary physical custody of the children. Mother’s position was that she should receive sole legal custody and that Father should have no access. Father sought unsupervised access and joint legal custody with tiebreaking authority.

Length of Separation from the Natural Parents

The court found that Father’s efforts to see his children in the time since Mother had moved to Burtonsville with them had been “underwhelming, at best.” It recognized that after May 2023, when the temporary protective order was entered, Father was not permitted contact with the children. It found, however, that Father had “made little effort to see the girls” in the period preceding that order. Consequently, at best, the children barely knew him and, at worst, they might “feel they don’t matter to him.” The court noted that supervised visitation could help to “remedy this situation.”

Prior Voluntary Abandonment or Surrender

The court found that Father’s efforts to “communicate with his daughters between August of 2022 and May of 2023 were less than impressive[,]” and he failed to produce any evidence to back up his assertions that he had attempted to contact An. The court did not credit Father’s testimony on this issue and found that he had “simply learned to live without” the children.

Capacity of Parents to Communicate and Reach Shared Decisions Affecting the Children’s Welfare

The court found that the parties did not communicate well and could not reach shared decisions.

Relationship Established Between the Children and Each Parent

The court found the “indirect evidence”⁵ on this issue “powerful” and concluded that Father had a “history of violence toward [An.]” and was “somewhat of a stranger to the[] girls” by his own making.

Ultimate Custody Decision

Taking into account the above findings, most significantly the findings of abuse and neglect, the court applied Fam. Law § 9-101(a) and found that abuse or neglect of the children likely would reoccur if Father were granted unsupervised access to them. Furthermore, the court credited Mother’s testimony that Father had “force[d] himself on her sexually at times without her consent” and that he had struck and pinched her, all constituting abuse of another party under Fam. Law § 9-101.1.

The court found that “[c]utting off all contact with Father . . . would cause its own trauma” to the children. Given the constraints of Fam. Law §§ 9-101 and 9-101.1, the court ordered that Father would have “supervised visitation only” under the terms of a referral order for the Supervised Visitation Program, to be entered separately.

⁵ The court noted that, because of the children’s ages, they did not testify, and neither a therapist nor a court custody evaluator testified. Initially, a custody evaluation was ordered, but the order was terminated after the final protective order was entered.

The court ordered Father to pay \$1610 per month in child support.

D. The Referral Order

On April 3, 2024, the court entered a Supervised Visitation Order of Referral. The order specified that Mother would bring the children to Visitation House, Inc., in Rockville, “on a Saturday or Sunday at a date and time to be established by Family Division Services and every other Saturday or Sunday thereafter for approximately two hours, with a total of six visits occurring over a three month period.” The order set a review hearing for July 12, 2024.

E. Motion to Revise

On April 13, 2024, which as mentioned above was eleven days after the entry of the Custody Order, Father filed a motion to revise that order.

With respect to the issues of abuse and neglect, Father disputed the court’s finding that photographs of An., introduced into evidence at trial by Mother, depicted bruising; and questioned how the court could on the one hand find that Mother was exaggerating the extent of the abuse but on the other hand credit her testimony about the abuse. He emphasized his “calm demeanor” throughout his testimony, which in his view reflected upon his credibility. He complained that Mother’s “Americanized accent,” as contrasted to his own “foreign accent,” may have affected the court’s credibility findings.⁶ He pointed to other evidence that tended to discredit Mother’s allegations of abuse, including a phone call he had recorded between himself and the children a month before Mother had filed for

⁶ Both Mother and Father are of Ghanaian descent.

a protective order,⁷ and the absence of any medical evidence of injuries consistent with the allegations of abuse.⁸

Father asked the court to revise the Custody Order to grant him unsupervised visitation “on an alternating week basis,” two weeks’ vacation, and alternating holiday/birthday access.

F. The Supplemental Visitation Order

On April 26, 2024, the court entered an order temporarily suspending visitation because it had learned that “the parties are now unavailable for the Saturday or Sunday times scheduled by [the supervised visitation program].”

G. Denial of Motion to Revise

By order entered on May 2, 2024, the court denied Father’s post-judgment motion. It reasoned that Father’s challenges to the court’s credibility findings and weighing of evidence did not justify changing the Custody Order.

Father noted this appeal on May 10, 2024. On July 1, 2024, the circuit court issued a new referral order reestablishing supervised visitation under the same terms.

DISCUSSION

Father contends the circuit court erred by denying his post-judgment motion for the exact same reasons he raised below.

⁷ The recording was played during the merits hearing.

⁸ Father also challenged the court’s finding that Mother had no income, pointing out that at a *pendente lite* hearing, the court found that Mother was receiving \$775 per month in temporary cash assistance. He does not challenge the calculation of child support on appeal.

Because Father filed his motion more than 10 days but less than 30 days after the court entered its judgment, it was a motion to revise, under Rule 5-235(a). We review the denial of a motion to revise for abuse of discretion. *Bennett v. State Dep’t of Assessments & Taxation*, 171 Md. App. 197, 203 (2006) (cleaned up). That standard is strictly applied, however, and we will not reverse the court’s decision denying the exercise of its revisory power “unless there is a grave reason for doing so.” *Hossainkhail v. Gebrehiwot*, 143 Md. 716, 724 (2002). Indeed, we have said that the question on appellate review is whether the circuit court’s decision to deny the motion to revise “was *so far wrong*...as to constitute a clear abuse of discretion.” *Stuples v Baltimore City Police Dep’t*, 119 Md. App. 221, 232 (1998) (emphasis in original).

The crux of Father’s argument is that the court erred by believing Mother’s testimony that he abused An., neglected At., and physically and sexually abused Mother. 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). This is so because the trial court has the “unique opportunity to observe the demeanor and the credibility of the parties and the witnesses.” *Santo v. Santo*, 448 Md. 620, 625 (2016) (cleaned up). Here, the trial court was able to observe Mother, Father, and Grandmother during their testimony. It made detailed factual findings and demeanor-based credibility assessments, concluding that while Mother had overstated the extent of the abuse perpetrated by Father, she was truthful in testifying that Father had committed three specific instances of abuse against An.; that Father had perpetrated acts of abuse against her; and that Father had neglected At. Conversely, the court found Father’s testimony to

lack credibility. As the fact finder, the court was free to accept or reject all or part of any witness’s testimony, and we will not second-guess its credibility determinations in that regard. *See Hollingsworth & Vose Co. v. Connor*, 136 Md. App. 91, 136 (2000) (explaining that the fact finder may “believe all, part, or none of the testimony”).

Father’s remaining challenges go to the weight the circuit court accorded to evidence. Like credibility determinations, the weighing of evidence is quintessentially a task for the finder of fact, here the trial court. *See Kremen v. Md. Auto. Ins. Fund*, 363 Md. 663, 682 (2001) (“Our function is not to retry the case or reweigh the evidence[.]”).

Father’s arguments on appeal do not demonstrate any abuse of discretion by the circuit court, much less an egregious error or a grave reason to justify reversal. Accordingly, we shall affirm the circuit court’s order denying Father’s motion to revise the Custody Order.

**ORDER OF THE CIRCUIT COURT FOR
MONTGOMERY COUNTY DENYING
MOTION TO REVISE CUSTODY ORDER
AFFIRMED. COSTS TO BE PAID BY THE
APPELLANT.**