

Circuit Court for Baltimore County
Case No.: C-03-FM-23-809563

UNREPORTED*
IN THE APPELLATE COURT
OF MARYLAND

No. 1202

September Term, 2023

A.C.

v.

M.C.

Zic,
Albright,
Kenney, James A., III,
(Senior Judge, Specially Assigned),

JJ.

Opinion by Zic, J.

Filed: June 14, 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).

A.C.¹ (“Mother”), appellant, appeals from the entry of a final protective order in the Circuit Court for Baltimore County in favor of her ex-husband, M.C. (“Father”), appellee, on behalf of their three minor children. She presents two issues,² which we combine and rephrase as one: Did the circuit court err or abuse its discretion by its grant of the final protective order in favor of Father on behalf of the children? We answer that question in the negative and affirm the order of the circuit court.

BACKGROUND

Mother and Father are the formerly married parents of three children: M, age 15; S, age 13; and E, age 6.³ They separated in 2020. Mother moved to Kentucky where she lived with her parents and other family members. Father continued to reside in Baltimore County, where the parties were divorced in March 2023. Mother was granted primary custody of the children during the school year and Father was granted regular access periods with the children in Maryland.

¹ To protect the children’s privacy, we refer to the parties by their initials in the caption and as “Mother” and “Father” in the body of this opinion and to the children by their first initials.

² The issues as presented by Mother, pro se, in an informal brief are:

1. At no point during these court proceedings was there an objective interview of [the children].
2. [Father] continues to alienate [the children] from their biological mother.

³ We gather from information provided by Mother in her record extract that Father legally adopted M and S after he married Mother and that he is the biological parent of E.

The Temporary Protective Order

At the end of May 2023, Father picked the children up for a scheduled summer access period. The children immediately told Father about an incident that occurred at Mother’s house when she beat their family dog with a bull whip in front of them, causing the dog to bleed, and continued to beat the dog while it bled. They were “agitated” and “jittery,” and Father could tell they were upset.

About a month later, on June 28, 2023, Father filed in the circuit court a petition for protection from child abuse on behalf of the children. In addition to the above incident, he alleged that Mother made threats of violence, caused mental injury to the children, shook the children, and screamed in their faces. Father added that the children were “in fear” because Mother had guns in the house and had “threatened to kill herself in front of them.” The children were “afraid [that] she will kill them first.”

That same day, the circuit court granted Father a temporary protective order on behalf of the minor children. The final protective order hearing was scheduled for July 5, 2023. Pursuant to Md. Code, Fam. Law § 4-505(e), the case was referred to the Baltimore County Department of Social Services (“BCDSS”) for an investigation.⁴

⁴ That statute provides 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.” Fam. Law § 4-505(e)(1). The local department “shall . . . investigate the alleged abuse” and send the court a copy of its report no later than the date of the final protective order hearing. Fam. Law § 4-505(e)(2)(i)-(ii).

The DSS Report

On June 30, 2023, a BCDSS social worker conducted virtual interviews of Father, Mother, and the children. The social worker filed a written report with the circuit court on or about July 3, 2023 (“the DSS Report”). We summarize the report, which detailed the substance of the social worker’s virtual interviews with each family member.

Father told the social worker that the children were living with Mother in an 800 square foot house along with five other people: Mother’s parents, Mother’s sister, and Mother’s sister’s two children. The house did not have heat or air conditioning and was extremely cramped. The occupants of the house shared one bathroom that, until recently, had no door. Father reported that there were many loaded, unsecured firearms in the home and that the older children were fearful that E might access the firearms.

He reported that Mother physically disciplined M and E but did not physically discipline S because she favored him. The children expressed fear of Mother’s anger, which had increased after the incident with their dog. Father was concerned that Mother or her friends might come to Maryland to take the children or to cause him harm based upon social media posts made by Mother that he shared with the social worker.

E, then age 5, reported to the social worker that Mother “whooped” her if she did “something bad” and that she did not think it was fair that Mother hit her, but not her siblings. She also reported that Mother screamed “right in her face.”

M, then age 14, characterized Mother as “impatient and pushy.” Mother was “unpredictable with expressing anger.” When M was younger, Mother “whoop[ed]” her on her buttocks. More recently, Mother had hit M on the arm and the face while she was

wearing a ring. M told the social worker that she was fearful of Mother's anger, especially because she carries a firearm. M had witnessed Mother "whoop" E, but stated that she does not hit S.

M reported that a few years earlier, Mother had a "meltdown" about her separation from Father, told M and her siblings goodbye, told Father that he should come get the children, and left. M's grandparents were concerned that Mother was going to commit suicide. Mother "eventually changed her mind."

M described cramped living conditions in her grandparents' home in Kentucky and confirmed that the bathroom did not have a door until recently. She stated that she was responsible for most of the cooking and cleaning unless her grandmother was home. Mother "stayed in bed for long periods of time[.]" There were loaded guns in the house that she and S knew how to access.

M witnessed Mother hit the family dog with a bullwhip "six times" causing it to bleed on its stomach and mouth.

S, then age 12, reported that he witnessed Mother hit the family dog with a bullwhip and that his grandfather threatened to kill the dog. He described their home as "very small" and said that because so many people lived there, there was little food. Mother spent most of her time "laying [sic] in bed watching television."

S expressed fear about Mother's "temper" and "her screaming." He often hid in his room "for safety." It was not unusual for Mother to "throw[] things or hit[] the wall out of anger." S estimated that there were eight loaded guns in the house. S had witnessed Mother lift E by her arm and hit her on her buttocks "multiple times."

Mother reported that the concerns raised by Father had been litigated during the parties' recent divorce trial. In the interim between when the children came to stay with Father and the filing of the petition for protection from child abuse, Mother had moved out of her parents' house and was now living with her boyfriend in Kentucky. She moved because she wanted the children to have their own bedrooms.

Mother admitted that she hit the family dog with a bullwhip, but said she had “used a part of the bullwhip that was not as dangerous to the dog itself” and that “the dog did not bleed as reported.” Mother confirmed that she had considered suicide in 2020, after she and Father separated. Mother now was seeing a psychiatrist and taking medication to treat bipolar disorder, and now has “coping strategies to deal with her anger, including going outside and walking away when she is upset.”

Mother stated that she had used physical discipline with M and S in the past but had never used it with E and discontinued it with her older children. According to Mother, as of March 1, 2023, the date the divorce judgment was entered, all firearms in her parents' home were locked up. Mother said that she did not own any firearms, having sold her last one two years ago.

Final Protective Order Hearing

The final protective order hearing commenced on July 5, 2023. Father was represented by counsel and Mother represented herself.

Father testified in his case that as soon as he picked the children up at the end of May 2023, they “all started blurting [] out” the incident with the family dog. S told

Father that Mother keeps a loaded handgun in the console of her car. The court admitted the DSS Report into evidence without objection.⁵

Father requested for the court to interview the children in chambers. The court took a recess to read this Court’s recent decision in *C.M. v. J.M.*, 258 Md. App. 40 (2023), which addresses, in part, guidelines for interviewing children in the context of protective order proceedings.

When the court reconvened, the trial judge expressed concern that it was being asked to “undo[.]” the results of the divorce hearing, which had occurred just over three months earlier. The court stated that it did not see “any benefit” to reinterviewing the children a few days after they were interviewed by a social worker. The court determined to continue the hearing for two weeks, leaving the temporary protective order in place, to allow the court to consider the information and to consult with the judge who presided over the divorce hearing.⁶

At the continued hearing on July 18, 2023, Father renewed his request for the court to interview the children in chambers. Mother opposed that request, arguing that it

⁵ The DSS Report was admissible under Md. Rule 5-803(b)(8)(iv), which makes factual findings in a report of an investigation commenced under Md. Ann. Code, Fam. Law § 4-506 admissible at a final protective order hearing so long as both parties have had an opportunity to review the report. The court verified that Mother had reviewed the report.

⁶ This was permissible under Md. Rule 18-102.9(a)(4), which permits a judge to consult with another judge “provided the judge does not decide a case based on adjudicative facts that are not made part of the record, and does not abrogate the responsibility personally to decide the matter.” The court also is empowered to extend a temporary protective order for up to six months for good cause. Fam. Law § 4-505(c)(1)-(2). Mother does not raise any issues concerning the continuance on appeal.

was “detrimental to their mental and emotional health” to be interviewed again. The court ruled that it would interview M.

The trial judge met with M privately in another courtroom. The court summarized their conversation on the record. The court asked M what she liked to do with Mother. M replied that Mother “stayed in bed a lot” and that when they did go out, Mother tended to take a lot of photographs as documentation of the outing rather than engaging with them and “enjoying the actual time.”

M said multiple times that she felt safer at Father’s home. She said Father engaged with them more and seemed to enjoy spending time with them. He took care of them – doing dishes and laundry, which was in contrast to Mother. M characterized Father as “patient” and said that he did not yell. His style of discipline was to talk to the children about their behavior. In contrast, she described Mother as “unpredictable and irritable.” Mother had hit her on the lip. Overall, M reiterated that she felt “better cared for and safer” with Father.

Mother testified in her case.⁷ She explained that Father “control[led] and manipulate[d]” the children by “playing on [their] emotions and love for him[.]” She claimed that Father held the children “hostage” in November 2020 for 51 days, refusing to allow Mother to see them before the court ordered them returned to her in Kentucky.

⁷ Mother told the court that she had two witnesses she wished to call, but they were in Kentucky. The court advised that because Mother had not requested in advance to call witnesses over Zoom, it would not be possible to do so. Mother does not raise this as an issue on appeal.

Mother disputed the recent allegations made by the children. She claimed that a photograph that Father had provided to the social worker purporting to show her sitting on a couch holding a firearm depicted a BB gun. She stated that there were “no loaded or unattended guns” in the home where the children lived. She listed the guns owned by her father, all of which were kept “locked and unloaded” in a camping van except a gun he kept “locked in the console of his truck[.]” She introduced into evidence a series of text messages from March showing that she had arranged to sell a firearm she owned. She testified that the firearm she sold was the only gun she had owned.

Mother denied that she was an “angry or volatile person” or that she ever “hit or scream[ed] at [her] children.” She coped with frustration by walking away or going for a jog. She denied that she ever used physical discipline with E or hit M on the arm or the face. She asserted that M and S had never seen her “spank, hit or grab E in frustration or anger because [she had] never done that.”

Mother denied “bull whip[ping]” the dog, explaining that that “takes skill” that she does not have. She yelled at the dog because it grabbed a live chicken out of her hand. The dog ran into the kennel with the chicken in his mouth and she chased him and “struck him two to three times with the tail end of the bull whip” to get him to release the chicken. When the dog released the chicken, the dog took off running. Mother testified that there was no blood. Mother’s father threatened to kill the dog because it killed the chicken but did not follow through on that threat.⁸

⁸ Mother also disputed allegations made by the children to the BCDSS worker that the house was unclean and expressing concerns about privacy in the home.

Mother explained that Father had a history of alienating the children from her and her family. In Kentucky, she ensured that the children had a community of people who cared for them such as the 4-H club and therapy. She described the home the children would live in if they returned to her custody and their planned enrollment in public school in the Fall as well as after school activities like ballet for E, archery for S, and dance for M. Mother introduced into evidence numerous photographs of her and other family members with the children at various attractions in Kentucky.

At the close of all the evidence, Father’s attorney argued that the case came down to the court’s assessment of the DSS Report and the court’s interview with M. Counsel maintained that evidence that M, S, and E were fearful of Mother was sufficient under the authority of *C.M.*, 258 Md. App. at 40, to establish a mental injury to the children justifying the entry of a final protective order. The evidence that Mother beat the dog in the presence of the children, standing alone, showed that Mother had caused a mental injury to the children.

Mother responded that the evidence did not support Father’s allegation that she had caused mental injury to the children but, to the contrary, that Father had done so by alienating and manipulating them. She maintained that her love for her children was unconditional, but that Father’s love for them was not and the children had learned to “appease him.”

The court ruled from the bench that it was convinced by a preponderance of the evidence that the children suffered both mental and physical injuries at the hands of Mother. The court credited the children’s reports to the social worker that Mother

whipped the family dog until it bled and rejected Mother’s testimony to the contrary. The court did not find Mother’s testimony that she never hit E credible given that M told the court that she had witnessed Mother hit E and all three children told the social worker the same. The court credited M’s statement to the court that she was fearful of Mother.

The court opined:

tak[ing] into account what occurred to the dog, the past abuse of the children, and the mental injury of the constant fear that [Mother] places on her children, it was palpable to me that [M] and through conversation clearly the younger children fear their mother and being around her in her house. They don’t feel safe.

To me that equates to mental injury, as well as physical injury.

The court granted a protective order for a period of 12 months and granted custody of the children to Father. The court ordered that Mother would have access to the children by telephone, FaceTime, or Zoom each day for between 15 and 30 minutes, as appropriate given the children’s schedules. Mother was granted in-person, supervised access with the children one weekend day each week for four hours, with the precise day to be determined by the Thursday prior. The visits would take place in Maryland either at a visitation center or at Father’s parents’ home.

The court entered the final protective order encompassing those findings that same day.⁹ This timely appeal followed.

⁹ Since the entry of the final protective order, Mother moved to modify the terms of her visitation access with the children. The court held a hearing on Mother’s motion on April 8, 2024 and modified the order to provide that, going forward, visits would be
(continued)

STANDARD OF REVIEW

In reviewing the issuance of a final protective order, “we accept the circuit court’s findings of facts, unless they are clearly erroneous.” *C.M.*, 258 Md. App. at 58 (citing Md. Rule 8-131(c)). “We [] consider evidence produced at the trial in a light most favorable to the prevailing party.” *Id.* (cleaned up). We defer to the court’s determinations of credibility, as it has “the opportunity to gauge and observe the witnesses’ behavior and testimony during the [hearing].” *Barton v. Hirshberg*, 137 Md. App. 1, 21 (2001) (quoting *Ricker v. Ricker*, 114 Md. App. 583, 592 (1997)). In reviewing the circuit court’s ultimate decision to grant a final protective order, we independently apply the law to the particular facts of the case. *Piper v. Layman*, 125 Md. App. 745, 754 (1999).

DISCUSSION

I. THE CIRCUIT COURT PROPERLY GRANTED THE FINAL PROTECTIVE ORDER.

To be granted a final protective order, the party seeking the order must show “by a preponderance of the evidence that the alleged abuse has occurred[.]” Fam. Law § 4-506(c)(1)(ii). “Abuse” of a child is defined as “the physical or mental injury of a child under circumstances that indicate that the child’s health or welfare is harmed or at

supervised by a third-party family friend at the home of Father’s parents, not by either of his parents, and that there would be no video or audio recording of the visits except as deemed necessary by the third party supervisor.

Father also moved to modify custody and child support within the parties’ divorce case. A hearing on Father’s motion is scheduled for May 15, 2024. As of the date of the filing of this opinion, the magistrate has not filed recommendations.

substantial risk of being harmed[.]” Fam. Law § 5-701(b)(1); *see also* Fam. Law § 4-501(b)(2)(i) (stating that if the person for whom relief is being sought under the domestic violence subtitle is a child, then abuse also includes the definition of abuse set out in the child abuse and neglect subtitle). “Mental injury” is further defined as “the observable, identifiable, and substantial impairment of a child’s mental or psychological ability to function caused by an intentional act or series of acts, regardless of whether there was an intent to harm the child.” Fam. Law § 5-701(r). “Both physical and mental harm must be intentional and cannot be the product of an accident.” *C.M.*, 258 Md. App. at 57 (citations omitted).

In *C.M.*, this Court held that a trial court did not err by granting a final protective order on the basis of mental abuse where a father sent text messages to his child and directed comments toward him in person about the child’s sexual orientation that caused the child to be frightened of his father. *Id.* at 49-55. We reasoned that, in reaching that conclusion, the trial court properly relied upon its *in camera* interview with the child, text messages introduced into evidence, and the report of the social worker in which the child related that he did not feel safe with father. *Id.* at 61-62.

Similarly, in the instant case, the circuit court relied upon its interview of M, statements made by the children to the BCDSS social worker, and Mother’s testimony at the final protective order hearing in determining that it was more likely than not that Mother caused mental injury to the children. The trial court credited the evidence that

Mother bull whipped the family dog in front of the children until it bled.¹⁰ It further found that the children were fearful of Mother’s temper based on M’s statements to the court that she felt safer with Father, her “palpable” fear of Mother, and S’s statement to the social worker that he hid in his room to avoid Mother’s temper. The court found that the children lived in “constant fear” of Mother’s temper as a result of her volatility and because they witnessed her whip the family dog. These findings were supported by evidence in the record and were not clearly erroneous. The trial court did not err by determining that this fear amounted to mental abuse. *See id.* at 61 (holding that the trial court’s findings that the minor child was “frightened,” “scared,” and “fearful,” of his father’s anger and his refusal to accept the child’s sexual orientation supported the determination that the father mentally abused the child). On this basis alone, we would affirm the grant of the final protective order.

Though not necessary to our decision, we also perceive no error in the court’s finding that Mother caused physical injury to the children. This finding was supported by evidence that Mother routinely “whooped” E, and M’s statement that Mother hit her on the lip while wearing a ring.¹¹

¹⁰ Mother did not dispute having hit the family dog with the bull whip. Rather, she disputed the manner in which she used the bull whip and the extent of the injuries to the dog.

¹¹ We recognize that “[r]easonable corporal punishment, by definition, is not child abuse.” *Charles County Dep’t of Soc. Servs. v. Vann*, 382 Md. 286, 303 (2004). In this case, however, Mother did not assert that she used reasonable corporal punishment on the children, but rather denied that she struck them. The court, however, did not credit her testimony. Further, M told the trial court and the social worker that Mother hit her in the face, which is outside the realm of reasonable physical discipline of a child.

Mother’s challenges to the court’s findings are unavailing. She asserts that the court erred by relying upon the children’s statements to the social worker summarized in the DSS Report and upon M’s *in camera* interview because neither were “objective.” With respect to the DSS Report, she emphasizes that the interviews were conducted virtually from Father’s home where the children were aware that Father keeps “AI devices” in every room. She maintains that the court should have credited her testimony disputing the allegations and evidence that Father has a history of alienating the children from her. With respect to M’s *in camera* interview, Mother maintains that her daughter was “ushered” into the court’s presence by Father and his lawyer and that she had “no protection from his emotional manipulation” since she entered Father’s care on May 23, 2023.

It is not within the purview of an appellate court “to retry [a] case or reweigh the evidence.” *Kremen v. Maryland Automobile Ins. Fund*, 363 Md. 663, 682 (2001). Likewise, it is well-established that 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 in original). Consequently, though the circumstances surrounding the interviews of the children were a factor the circuit court could consider in assigning weight to the DSS Report and to M’s statements in the *in camera* interview, it

is not our prerogative to second guess its determination in that regard.¹² Likewise, the circuit court was in the best position to gauge M’s credibility when it interviewed her in person and to assess Mother’s credibility when she testified at the hearing.

Mother also asserts that the circuit court should have considered the report prepared by the court-appointed custody evaluator in the parties’ divorce case. That report was not introduced into evidence at the final protective order hearing. Thus, it was not before the circuit court and is not before this Court on appeal.

CONCLUSION

For all these reasons, the circuit court did not err by granting the final protective order.

**JUDGMENT OF THE CIRCUIT COURT
FOR BALTIMORE COUNTY AFFIRMED.
COSTS TO BE PAID BY APPELLANT.**

¹² We note that the social worker verified with each child at the start of each interview that they were alone.