Circuit Court for Anne Arundel County
Case No. C-02-FM-23-810822

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 1551

September Term, 2023

RYAN MIRABAL

v.

AMY STAHLER

Arthur,
Zic,
Raker, Irma S.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Arthur, J.

Filed: September 24, 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).

Ryan Mirabal ("Father") and Amy Stahler ("Mother") are the divorced parents of a minor child, "B.,"[1] who was born in 2016. On October 4, 2023, Mother secured a final protective order that barred Father from abusing or threatening to abuse B. and from having "unlawful contact" with B. Father appealed.

FACTUAL AND PROCEDURAL BACKGROUND

The parties' judgment of divorce incorporated a custody agreement, pursuant to which Mother and Father have joint legal and shared physical custody of B.

On August 18, 2023, Mother filed a petition for a protective order, against Father and on behalf of B., based on allegations of physical abuse during a custody exchange. The District Court of Maryland for Anne Arundel County granted a temporary protective order and, apparently having found reasonable grounds to believe that B. had been abused, referred the matter to the Anne Arundel County Department of Social Services (the "Department" or "DSS") to conduct an investigation.[2] The district court transferred the case to the Circuit Court for Anne Arundel County for a final protective order hearing.

[1] B. is a randomly selected letter. It may or may not be the first letter of the child's name.

[2] The statute governing temporary protective orders in the context of domestic violence provides: "Whenever a judge finds reasonable grounds to believe that abuse of a child, as defined in Title 5, Subtitle 7 of this article . . . has occurred, the court shall forward to the local department a copy of the petition and temporary protective order." Md. Code (1984, 2019 Repl. Vol.), § 4-505(e)(1) of the Family Law Article ("FL"). The local department must investigate the allegations of abuse and provide the court with a report by the date of the final protective order hearing. FL § 4-505(e)(2).

The circuit court held a hearing on October 4, 2023. Both parties testified and were represented by counsel. A written report of DSS's investigation was admitted into evidence.

Mother's Testimony

Mother testified that, on the morning of August 16, 2023, she took B., who was then seven years old, to a shopping center parking lot where she and Father typically exchanged custody. They arrived earlier than Father and went into a coffee shop. While there, Mother received a text from Father asking if she had arrived yet. She responded that she and B. were in the coffee shop and would be right out.

As they started walking toward Father's truck, he pulled out of a parking space and stopped at a stop sign. When Mother opened the back door of the truck for B., the child "started screaming[.]" He hid behind Mother and said that he did not want to go with Father. Mother asked B. what was wrong, but he "wasn't calm enough" to speak. She asked Father to pull into a parking space so they could "sort this out."

Father parked his truck and started walking over to Mother and B. B. "started acting erratic[ally]" and "seemed very scared[.]" He hid behind Mother and "grabbed onto" her. Mother described what happened next:

> [Father] reached behind me and grabbed [B.] and was pulling him and squeezing him and pulling him away and [B.] was screaming. . . . [B.'s.] arms and legs were flinging around and I think at that time he was trying to push [Father] away[.] . . . And so [Father] was just grabbing [B.] and like taking him over to the truck. And so it kept happening the entire walk over there. . . . I was concerned.

Mother testified that Father "put [B.] really aggressively into the [truck] and was grabbing him and squeezing him all up and down[.]" Eventually, the situation "calmed a little bit." B. said something to Father, and Father picked B. up, "threw him out of the truck," and said to Mother, "Fine, you take him then[.]" B. fell onto his knees into a grassy area. Father walked to the front of the truck and spoke to Mother in a "really angry voice." Mother testified, "I was holding onto the door trying to answer [Father's] questions and he drove away."

Mother and B. went back to the coffee shop and sat down outside. Mother explained, "It was [Father's] custody time, so I wanted to [remain] in the area" to see if he would "return and take his custody time." She tried to help B. relax because he was "pretty upset." Father did not return.

While Mother and B. were waiting, a police officer approached and spoke to Mother. Mother testified that an anonymous caller had reported the incident to the police. The officer provided Mother with a police report number and gave her advice "on what [she] could do."

The following evening, Mother noticed scratches and bruises on B.'s chest, shoulders, and arms. She reported the injuries to police the next morning. Photographs of B. taken by Mother were admitted into evidence.

Father's Testimony

Father testified that he "grabbed" B. and placed him in the truck because they were near a "highly traffic[ked] four-way intersection." He said that B.'s "reluctan[ce]" to go with him "required" that B. "continue[] to run around in this high traffic area," and

he was concerned that B. would be hit by a car. He said, "My concern kept growing and so I finally didn't want anything to happen, so I grabbed [B.] and put him in the truck to stop him from running around."

Father testified that he picked B. up around his waist. He stated that, after he placed B. in the truck, he held him down because B. "continuously" punched him in the nose. Father denied that he hit B. or that he pushed or threw B. out of the truck. He offered no explanation about how the encounter ended, and he did not dispute that he drove away. He said that B. incurs scratches and bruises on a "daily" basis. He attributed the scratches and bruises to B. coming into contact with furniture and participating in martial arts.

On cross-examination, Father denied that he had been reprimanded by the military for dishonesty and making a false statement. Counsel for Mother then introduced into evidence a "Memorandum of Reprimand" from the Department of the Army, dated March 24, 2017, before the parties' divorce. The stated ground for the reprimand was that Father had falsely stated that Mother and B. resided in the United States, for the purpose of "ensur[ing] eligibility for an additional [housing] allowance[,]" when in fact they were living in Germany, where Father was then stationed.

DSS Report of Investigation

The seven-page DSS report was admitted into evidence without objection. The investigation consisted of interviews with Mother, Father, and B. and a review of the photographs of B. taken by Mother.

Mother's description of the incident, as documented in the report, was consistent with her testimony at the hearing:

> [Mother] reported that when [B.] saw [Father], [he] started screaming, saying that he was not going with [Father,] and began hiding behind her. [Mother] reported that [Father] appeared to be angry and, during an exchange of words[,] . . . [Father] grabbed [B.'s] arms and pulled him to his truck and "shoved [B.] inside.". . . . [Father] was trying to put [B.'s] seat belt on when [B.] began hitting [Father] and yelling "help."

Mother told the caseworker that Father "began squeezing [B.'s] arms." Father "pulled" B. out of the truck and told Mother to take him back. According to Mother, B. said, "just kill me already."

Father's statements to the caseworker were largely consistent with his trial testimony, but included additional details:

> [Father] reported that [B.] was hesitant to go with him. [Father] shared that [B.] complained that he did not want to go because he did not want to clean the toothpaste. When asked for an explanation, [Father] shared that during the prior visit, [B.] made a big mess with the toothpaste and that he was told that it would be saved for him to clean up on the next visit.
>
> [Father] reported that [B.] was throwing a fit and running around where there was a heavy flow of traffic for at least 15-20 minutes. [Father] reported that [B.] became aggressive and punched him in the nose so hard that he experienced pain for [two] days. [Father] reported that he was attempting to hold [B.] down by legs and forearms to put his seatbelt on once getting him into the vehicle. [Father] reported that [B.] began kicking him in the face. [Father] shared that he never retaliated but rather attempted to hold him to calm down. . . . [Father] stated that he was getting frustrated, and that [Mother] did nothing to assist.

Father told the caseworker that he "eventually just gave [B.] back to [Mother] as he had a flight to catch for his Reserve Training that evening." He explained that B.'s paternal grandparents would have been spending the weekend with B.

B. initially told the caseworker that he did not want to go with Father because he did not want his grandparents to "'hurt him,'" but he denied that they had previously hurt him. He then said that the "real reason" he did not want to go with Father was that he "'did not want to clean.'" He said that Father is "'way tougher'" than Mother and that Father is "mean sometimes" because he "'had a bad childhood.'" The report includes B.'s account of the incident, as told to the caseworker:

> [B.] reported that when he did not want to go to [Father's] house, [Father] grabbed his arms to put him into the car. [B.] reported that he was crying and trying to get out of [Father's] hold. [B.] shared that [Father] has never pushed him that hard before. [B.] reported that eventually he was able to go back with [Mother] and did not have to have the visit.

DSS concluded that there was no credible finding of "abuse" within the meaning of Title 5, Subtitle 7, of the Family Law Article, which defines abuse, in pertinent part, 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[.]" Md. Code (1984, 2019 Repl. Vol.), § 5-701(b)(1)(i) of the Family Law Article ("FL").[3] In explaining its conclusion, DSS noted that "small faint marks" shown in the photographs were "insignificant and inconsistent with child abuse," that there was no "extensive bruising," and that B. did not "express experiencing pervasive pain." DSS advised the court that it found "no maltreatment requiring a safety plan or additional Departmental intervention" and that it would defer to the court regarding the outcome of the protective order.

[3] "'Abuse' does not include the physical injury of a child by accidental means." FL § 5-701(b)(2).

The Court's Ruling

Ruling from the bench, the court found that Mother had satisfied her burden of proving, by a preponderance of the evidence, that Father assaulted B. The court stated that Mother was "significantly more credible" than Father and that some of Father's testimony was "either incredible or inconsistent." In the court's view, Father's claim that he was concerned about the busy intersection was inconsistent with his decision to move his vehicle closer to the intersection to pick B. up. The court further found that Father's conduct in removing B. from the vehicle and leaving him near the intersection "negates his assertion" that he was "trying to protect [B.] from traffic." The court remarked that, although Father presented a "different version" of the incident, he "did not refute in his testimony [Mother's] assertion that he had reached behind her and grabbed [B.] by the arm and dragged him to the car." The court stated that what happened inside the truck was "less clear." The court found it to be immaterial that DSS did not find that the statutory definition of "child abuse" had been met, because "whether there was an injury or not, there was an unlawful touching[.]"

Following the hearing, the court entered a final protective order which prohibited Father from abusing or threatening to abuse B. and from having "unlawful contact" with B. The court did not modify the existing custody order.

The final protective order was in effect for six months and expired on April 4, 2024, while this appeal was pending.

QUESTIONS PRESENTED

Father raises the following questions, which we have edited for concision:[4]

I. Is the appeal moot because the protective order has expired?

II. Did the court err in finding that Father assaulted B.?

III. Did the court err in finding that Father did not refute Mother's testimony that he grabbed B. by the arms?

STANDARD OF REVIEW

Section 4-506 of the Family Law Article governs final protective orders stemming from domestic abuse. To be granted a final protective order, the petitioner must show "by a preponderance of the evidence" that the alleged abuse has occurred. FL § 4-506(c)(1)(ii). "'[P]reponderance of the evidence' means 'more likely than not[.]'" *Id.* at 56-57 (quoting *State v. Sample*, 468 Md. 560, 598 (2020)). "'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.'"

[4] The questions in Father's brief are:

I. Does the existence of collateral consequences permit appellate review even if the Final Protective Order has expired by the time this matter is to be decided?

II. Did the Circuit Court err and abuse its discretion by finding that Father committed an assault when he forcibly carried his resistant child to the car for scheduled visitation?

III. Did the Circuit Court abuse its discretion by basing its ruling on the erroneous finding that Father did not refute Mother's testimony?

Piper v. Layman, 125 Md. App. 745, 754 (1999) (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*. A trial court's factual findings are not clearly erroneous if there is substantial evidence to support them. *Innerbichler v. Innerbichler*, 132 Md. App. 207, 230 (2000). "We leave the determination of credibility to the trial court, [which] has 'the opportunity to gauge and observe the witnesses' behavior and testimony during the trial.'" *Barton v. Hirshberg*, 137 Md. App. 1, 21 (2001) (quoting *Ricker v. Ricker*, 114 Md. App. at 592). "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 v. Layman*, 125 Md. App. at 754.

ANALYSIS

I.

Father asserts that, although the final protective order expired during the pendency of this appeal, the issue is not moot. We agree.

"A case is moot when there is no longer an existing controversy when the case comes before the Court or when there is no longer an effective remedy the Court could grant." *In re R.S.*, 242 Md. App. 338, 353 (2019) (quoting *Suter v. Stuckey*, 402 Md. 211, 219 (2007)), *aff'd*, 470 Md. 380 (2020). "Appellate courts do not sit to give opinions on abstract propositions or moot questions, and appeals which present nothing else for

decision are dismissed as a matter of course.'" *Suter v. Stuckey*, 402 Md. at 220 (citation omitted).

"In light of the stigma that is likely to attach to a person judicially determined to have committed abuse subject to protection under the Domestic Violence Act," "the expiration of the protective order does not automatically render the matter moot." *Piper v. Layman*, 125 Md. App. at 753. "The review of such finding on appeal, and the potential for vacation of the order, thereby removing the stigma, gives 'substance to [the] appeal.'" *Id*. (quoting *Williams v. Williams*, 63 Md. App. 220, 226 (1985)).

Mother asserts that the stigma-based exception to the mootness doctrine does not apply here because Father stipulated to an extension of the briefing schedule and did not request an expedited appeal. According to Mother, Father's conduct "belies any claim that [he] is truly concerned about any supposed stigma." We are unpersuaded. Consequently, we shall address the substantive arguments raised in Father's brief.

II.

Father claims that the issuance of the final protective order was based on clearly erroneous findings and amounted to an abuse of the court's discretion. We disagree.

In the context of domestic violence, final protective orders are governed by Subtitle 5 of Title 4 of the Family Law Article. The purpose of that statute is to "protect and 'aid victims of domestic abuse by providing an immediate and effective' remedy." *Katsenelenbogen v. Katsenelenbogen*, 365 Md. 122, 134 (2001) (quoting *Coburn v. Coburn*, 342 Md. 244, 252 (1996)). "The statute provides for a wide variety and scope of available remedies designed to separate the parties and avoid future abuse." *Id*. (quoting

Coburn v. Coburn, 342 Md. at 252). "Thus, the primary goals of the statute are preventive, protective and remedial, not punitive." *Id*. (quoting *Coburn v. Coburn*, 342 Md. at 252).

The relevant portions of the Family Law Article broadly define "abuse" 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; and revenge porn. FL § 4-501(b)(1). "If the person for whom relief is sought is a child, 'abuse' may also include abuse of a child, as defined in [FL § 5-701]."[5] FL § 4-501(b)(2)(i). The statute does not prohibit "reasonable punishment, including reasonable corporal punishment" performed by a parent or stepparent of the child. FL § 4-501(b)(2)(ii).

Here, the court granted a final protective order based on a finding of assault—specifically, an unlawful touching. "The statutory offense of second-degree assault encompasses three modalities: (1) intent to frighten, (2) attempted battery, and (3) battery." *Snyder v. State*, 210 Md. App. 370, 382 (2013). "A battery is a touching that is either harmful, unlawful or offensive." *Quansah v. State*, 207 Md. App. 636, 647 (2012).

A finding of an intentional battery "requires legally sufficient proof that the perpetrator intended to cause harmful or offensive contact against a person without that person's consent and without legal justification." *Elias v. State*, 339 Md. 169, 183-84

[5] As stated earlier in this opinion, "abuse "of a child is defined, in pertinent part, 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).

(1995); *see* Md. Criminal Pattern Jury Instruction 4:01(C) (Battery).[6] "[T]he intent need only be for the touching itself; there is no requirement of intent to cause a specific injury." *Elias v. State*, 339 Md. at 183 (quoting *State v. Duckett*, 306 Md. 503, 510 (1986)).

"[A]ny unlawful force used against the person of another, no matter how slight, will constitute a battery." *Lamb v. State*, 93 Md. App. 422, 447 (1992) (quoting *Kellum v. State*, 223 Md. 80, 85 (1960)); *accord Williams v. State*, 457 Md. 551, 567 (2018). "'A person may commit battery by kissing another without consent, touching or tapping another, jostling another out of the way, throwing water upon another, rudely seizing a person's clothes, cutting off a person's hair, throwing food at another, or participating in an unlawful fight.'" *Lamb v. State*, 93 Md. App. at 447-48 (quoting *State v. Duckett*, 306 Md. at 510-11).

We perceive no error in the court's finding that Father committed a battery upon B. The undisputed evidence established that B. did not want to go with Father, and that Father picked B. up, put him into the truck against his will, and held him down. The

[6] The pattern jury instruction for criminal battery states, in pertinent part:

> In order to convict the defendant of assault, the State must prove:
>
> (1) that the defendant caused [offensive physical contact with] [physical harm to] (name);
>
> (2) that the contact was the result of an intentional or reckless act of the defendant and was not accidental; and
>
> (3) that the contact was [not consented to by (name)] [not legally justified].

evidence was sufficient to support a finding of the battery modality of second-degree assault.

Father argues that "a parent's use of physical force to ensure a child's safety or compliance" cannot support a finding of assault for the purpose of the domestic violence statute. His argument is legally incorrect.

"Long before the advent of contemporary child abuse legislation, it was a well-recognized precept of Anglo-American jurisprudence that the parent of a minor child or one standing *in loco parentis* was justified in using a reasonable amount of force upon a child for the purpose of safeguarding or promoting the child's welfare." *Fisher v. State*, 367 Md. 218, 271 (2001) (quoting *Bowers v. State*, 283 Md. 115, 126 (1978)). Accordingly, "[a]s a defense, by way of justification, to what would otherwise be an assault and battery, an individual *in loco parentis*" may seek to establish "that the force used upon the child was privileged as necessary and proper to the exercise of domestic authority." *Anderson v. State*, 61 Md. App. 436, 443 (1985). The General Assembly codified this common law privilege in enacting FL § 4-501(b)(2)(ii), which provides that "[n]othing 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."

"The common law notion of privileged force as a defense to what would otherwise be assault and battery has two clear limitations." *Anderson v. State*, 61 Md. App. at 444. First, the force must "truly be used in the exercise of domestic authority by way of punishing or disciplining the child—for the betterment of the child or promotion of the

child's welfare—and not be a gratuitous attack." *Id.* Second, "the amount of force used [must] be moderate and reasonable." *Id.* at 444-45. Where moderate force is applied for the purpose of discipline or punishment, the parent or custodian is not liable for assault and battery or a similar offense. *Id.* at 446. But where the "chastisement becomes immoderate, it defeats the parental privilege and is treated as an ordinary assault and battery, as if perpetrated upon a stranger[.]" *Id.*

If however, the application of force occurs "outside any suggested context of punishment or chastisement[,]" the amount of force used is immaterial. *Id.* at 444 n.10. In such circumstances, the parent or custodian "is guilty of assault and battery whether the force employed is moderate or immoderate." *Id.* Stated differently, "where the battery is inflicted on the child with no purpose of enforcing parental discipline[,]" the privilege does not arise. *Fisher v. State*, 367 Md. at 274.

Father attempted to justify his actions by claiming that he grabbed B. and put him in the truck because B. was "running around in circles" near a busy intersection, and he was concerned that B. would be hit by a car. The court, however, expressly rejected that claim. It found that Father was "significantly" less credible than Mother, who testified that B. was hiding behind her and clinging to her before Father grabbed him. It found that Father's assertion that he was trying to protect B. from being injured by traffic at a busy intersection was "negate[d]" by evidence that Father moved his truck from a parking space to the intersection to pick B. up, and, after removing him from the truck, left him at the intersection and drove away. We must defer to the court's assessment of credibility, as it had the "opportunity to gauge and observe the witnesses' behavior and

testimony during the trial." *Barton v. Hirshberg*, 137 Md. App. at 21. Moreover, we see no error in the court's application of the law to its factual findings. Thus, we conclude the court did not err in rejecting the contention that Father's actions constituted "reasonable corporal punishment" within the meaning of FL § 4-501(b)(2)(ii).

The court made no findings as to whether the force used was reasonable or unreasonable, but it had no need to do so. Having found Father's claim that he acted out of concern for B.'s safety to be unconvincing, the reasonableness of the force applied was irrelevant.

Father contends that the court erred in finding that an assault occurred because, he says, there was no evidence that he had previously abused B. or that he was "angry" or made "hostile comments" during the incident in question. To the contrary, Mother testified that Father spoke to her in a "really angry voice." And, according to the DSS report, Mother told the caseworker that Father "appeared to be angry." In any event, evidence of anger, hostility, or prior abuse on the part of the defendant, while potentially relevant, is not required to prove an intentional battery.

Father suggests that the terms of the final protective order are inconsistent with the court's finding of abuse because the court did not find it necessary to alter the existing joint custody agreement, but only prohibited Father from abusing, threatening to abuse, or having unlawful contact with B. We disagree. "[I]n fashioning appropriate relief in a domestic violence case," the court's concern "is to do what is reasonably necessary—*no more and no less*—to assure the safety and well-being of those entitled to relief."

Katsenelenbogen v. Katsenelenbogen, 365 Md. at 137 (emphasis in original). In our view, the court's order was appropriately tailored to that standard.

III.

Father's third and final challenge to the final protective order is that the court erred in finding that he "did not refute Mother's testimony" that he reached behind her and grabbed B. by the arm. In support of this challenge, Father points to his testimony that he picked B. up "'around his waist.'" His argument is unavailing.

The court correctly stated that, although Father "had a different version of the [e]vent," he never denied that reached he behind Mother or that he grabbed B. by the arm during the incident.[7] In any event, as Father concedes in a different section of his brief, whether he picked up B. by the waist or grabbed his arms, "that distinction is immaterial."

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

[7] On direct examination, Father's counsel asked him whether he grabbed B. by his arms. Counsel for Mother objected to the question on the ground that it was leading. The court appears not to have ruled on the objection, and Father never answered the question.