

Circuit Court for Frederick County
Case No. C-10-FM-23-808609

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 1772

September Term, 2023

MARQUIA DOMINICQ WAITERS

v.

YVONNE DENISE TAYLOR

Shaw,
Tang,
Kenney, James A., III\
(Senior Judge, Specially Assigned),

JJ.

Opinion by Shaw, J.

Filed: October 11, 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).

This is an appeal from the issuance of a final protective order by the Circuit Court for Frederick County. Following a hearing, the court ordered Appellant, Marquia Dominicq Waiters, not to abuse, threaten to abuse and/or harass his minor child, not to contact her and to stay away from the child’s residence, school, and childcare providers. Appellee, Yvonne Denise Taylor, was awarded full custody and Appellant was granted supervised visitation. Appellant timely filed a Motion for a New Trial and his motion was denied by the court. Appellant then noted this appeal. He presents one question for our review:

1. Whether the trial court erred in signing the final protective order dated September 29, 2023, as there were no factual findings to support Appellee’s allegation of sexual abuse?

For the reasons that follow, we affirm the judgment of the circuit court.

BACKGROUND

N.T. is the daughter of Appellant, her father, and Appellee, her mother. On December 29, 2022, Appellee filed a petition for a protective order against Appellant on behalf of N.T., who was four years old, in the Circuit Court for Frederick County. She alleged that Appellant sexually abused N.T. during a visit between December 22, 2022, and December 25, 2022. Appellee sought a protective order limiting Appellant’s contact with N.T. The court ordered that an investigation be conducted by the Department of Social Services. An investigation was completed, the report was forwarded to the court and the parties viewed the report prior to the proceedings. On January 4, 2023, the court held a final protective order hearing and denied the petition.

On April 25, 2023, Appellee filed a second petition for a protective order on behalf of N.T., alleging abuse. The court ordered the Department of Social Services to conduct an investigation, and, on September 29, 2023, the court held a final protective order hearing. Appellant appeared *pro se* and Appellee was represented by counsel. Both parties viewed the report submitted by DSS prior to the beginning of the proceedings.

At the hearing, Appellee testified that, in December of 2022, her daughter returned home from a visit with Appellant and complained that her vagina was “bleeding.” Appellee observed that the area was swollen and she took her to Frederick Health Hospital where the child was treated. Appellee testified that she “followed their instructions on how to care for her until she healed.”

In January 2023, N.T. began seeing a therapist once a week. During her sessions, she made certain disclosures about Appellant. Her therapist reported those disclosures to the social worker assigned to the investigation. According to the DSS report, which was admitted into evidence, N.T. told her therapist on January 16, 2023, that Appellant was touching her inappropriately and not during bath time. On April 20, 2023, N.T. again disclosed to her therapist that Appellant was touching her inappropriately. N.T. expressed to her therapist that she did not want to visit Appellant’s house because she felt unsafe, slept on the floor, and did not receive food.

Appellant testified at the hearing and denied touching N.T. inappropriately. He stated that he did not bathe his daughter and further that Appellee was responsible for any abuse. Appellant objected to specific statements in the DSS Report arguing that they were

inadmissible hearsay because the social worker’s identity was not stated and the worker was not present to testify. The circuit court overruled the objections, citing the “hearsay exception with regard to a final protective order conducted pursuant to the Code.”¹

At the conclusion of the hearing, the court ruled that there was a preponderance of evidence to believe that Appellant committed sexual abuse of his minor child, N.T. The court ordered Appellant to not abuse, threaten to abuse, contact or attempt to contact the minor child, and to stay away from the child’s residence and school. Custody was awarded to Appellee and Appellant was granted supervised visitation.

On October 10, 2023, Appellant filed a Motion for a New Trial. The motion was denied by the court on October 31, 2023. Appellant filed this timely appeal.

STANDARD OF REVIEW

In reviewing a trial court’s grant of a final protective order, this Court accepts “the circuit court’s findings of facts, unless they are clearly erroneous.” *C.M. v. J.M.*, 258 Md. App. 40, 58 (2023) (citing Md. Rule 8-131(c)). We give deference to the trial court’s assessments of witness credibility because it had the “opportunity to gauge and observe the witnesses’ behavior and testimony.” *Barton v. Hirshberg*, 137 Md. App. 1, 21 (2001). The evidence is reviewed “in a light most favorable to the prevailing party[.]” *Friedman v. Hannan*, 412 Md. 328, 335 (2010) (quoting *Ryan v. Thurston*, 276 Md. 390, 392 (1975)). “As to the circuit court’s ultimate conclusion, we must make our own independent

¹ Md. R. Evid. 5-803 (b)(8)(A)(iv) allows factual findings reported to the court pursuant to Md. Code Ann., Fam. Law § 4-505 to be admitted into evidence in a final protective order hearing, provided that the parties have had a fair opportunity to review the report.

appraisal by reviewing the law and applying it to the facts of the case.” *C.M.*, 258 Md. App. at 58 (quoting *Piper v. Layman*, 125 Md. App. 745, 754 (1999)).

DISCUSSION

I. The circuit court did not err in granting a final protective order.

A petitioner, related to a child by blood, marriage or adoption may seek relief from abuse on behalf of the minor child. Md. Code Ann., Fam. L. § 4-501(m). The court may grant a final protective order when a petitioner proves “by a preponderance of the evidence that the alleged abuse has occurred[.]” Md. Code Ann., Fam. L. § 4-506(c)(1)(ii). A final protective order may be granted to protect any person eligible for relief from abuse. *Id.*

Abuse, under Section 4-501, includes sexual contact, as defined by the Criminal Law Article. Md. Code Ann., Fam. L. § 4-501(b)(iv). Sexual contact is the intentional touching of a victim’s genital or intimate area for sexual arousal, gratification or for the abuse of either party. Md. Code Ann., Crim. L. § 3-301(e)(1). Sexual contact does not include familial or friendly affection or an act for accepted medical purposes. Md. Code Ann., Crim. L. § 3-301(e)(2).

Appellant argues that the evidence presented at the protective order hearing did not support a finding of sexual abuse. Appellant contends the DSS report did not specifically point to sexual abuse, “the daughter did not specifically point to sexual abuse,” her reports were “vague”, and the court did not recite sufficient facts as a basis for its findings. Appellee did not file a brief in this matter, or otherwise, participate in this appeal.

Both parents testified at the protective order hearing and the parties also gave closing arguments. The DSS report was admitted into evidence and the court noted that its ruling was based, in large part, on the report. The court began its ruling by first, recounting the pertinent testimony. The court specifically referred to the DSS report which stated that the minor child disclosed that she had been touched vaginally several times by Appellant. There was testimony from the Appellee as to the time frame and details related to the incidences. Appellee also testified to taking the child to the hospital following a visit with Appellant, where the child complained that her vaginal area was swollen. Both the child's characterization and Appellee's account indicated that the contact was not associated with bath time. Approximately one month later, the child engaged in therapy and she eventually made separate disclosures to her therapist regarding sexual contacts by Appellant. In her ruling, the judge stated:

[T]he Court is concerned, when it looks at the report – and it is a preponderance of the evidence standard – with regard to the paragraph, particularly, that this worker spoke with [N.T.]'s therapist, Ms. Dorian Campbell-Temple, and she has disclosed twice that her father was touching her. The first time Ms. Campbell-Temple asked [N.T.] if it was during bath time. [N.T.] said no. The second time [N.T.] disclosed to her but did not disclose to her mother. She stated [N.T.] has said that she is unsafe at her father's house, that she sleeps on the floor at her father's house, that he does not feed her, and she's reportedly also stated that she does not want to go to her father's house.

The Court, as such, what I also further note, that in these hearings the Court always – and in this case – has made a credibility assessment, and I have considered the testimony of the parties and the credibility therein, including the manner in which they testified, and obviously in this case, both parties – the Court's considered the motive in this case with regard to both parties.

After the appearance of the petitioner, petitioner’s counsel, and the respondent, the Court notes that the person eligible for relief . . . is an individual who has a child in common with the respondent, one child, age 5.

There is a preponderance of the evidence, this Court finds for the reasons stated, to believe that the respondent committed the following acts of abuse: sexual abuse of a child . . . statutory abuse of a child, sexual.

Appellant cites *Musser v. Christie* in support of his argument that the evidence was vague and thus, insufficient. 131 Md. App. 200 (2000). In *Musser*, however, the trial judge, in an abuse case, made no findings of physical or mental injury as was required by the statute. *Id.* at 207. We reversed the judgment of the court, as a result. *Id.*

Here, the judge clearly articulated the evidence that supported her finding of sexual abuse, and her finding was in accordance with the protective order statute. The court’s ruling was based on the DSS report, as well as its assessment of the credibility of the witnesses. We hold the court did not err in finding that there was sufficient evidence of sexual abuse by Appellant to warrant the issuance of a final protective order.

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