

Circuit Court for Washington County
Case No. C-21-FM-23-810107

UNREPORTED*
IN THE APPELLATE COURT
OF MARYLAND

No. 1803

September Term, 2023

J.D.

v.

C.P.

Zic,
Tang,
Moylan, Charles E.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Zic, J.

Filed: December 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 Maryland Rule 1-104(a)(2)(B).

J.D. (“Father”) appeals from the entry of two final protective orders granted by the Circuit Court for Washington County, in favor of his ex-wife, C.P. (“Mother”),¹ on behalf of their two minor children.² Father presents one issue,³ which we have rephrased slightly as: Did the circuit court err in granting the final protective orders on grounds of mental abuse of the two minor children? For the foregoing reasons, we affirm.

BACKGROUND

Mother and Father are the formerly married parents of two minor children: E., age 14 at the time of the underlying proceedings; and K., then age 13. Events related to the present appeal occurred between April and August of 2023. The following facts summarize these events as revealed through testimony and evidence presented at hearings pursuant to Mother’s petition for protection for herself, E., and K. against Father.⁴

Father’s Prior Relationship

In April 2023, Father ended a relationship with his then-girlfriend. According to Father, this relationship “strained” his relationship with E. and K., both of whom stopped

¹ Mother, who proceeded in proper person in the circuit court, did not file an appeal or a brief in this case.

² To protect the children’s privacy, we refer to the parties by their initials in the caption and as “Father” and “Mother” in the body of this opinion, and to the children by initials.

³ Father phrased the question as follows:

1. Did the trial court err when it granted and issued a final protective order on behalf of each of the two teenage children on the grounds of mental abuse of a child?

⁴ The circuit court denied Mother’s petition for protection for herself against Father. This denial is not at issue here.

living with Father part-time prior to the breakup because of the “fighting” between Father and his ex-girlfriend. For a time following Father’s breakup, things between Father and the children began to improve. At the end of June 2023, however, Father informed Mother that he was helping his ex-girlfriend obtain counseling. Father believes his relationship with E. and K. subsequently deteriorated because of this conversation with Mother.

August 3, 2023

Much of the parties’ testimony before the circuit court involved events on August 3, 2023. That morning, Mother and Father encountered one another during an unrelated court proceeding. Mother claimed that, while sitting in the courtroom, Father sat behind her and told her that “she need[ed] to give him back his stuff that she stole.” Mother told Father she would return his things “when he [paid] child support.” Mother claimed that Father told her to “f[]ck off” and was then escorted from the courtroom by his attorney. Father, however, testified that he left the courtroom on his own “to separate himself from [Mother]” but otherwise corroborated Mother’s version of the interaction.

Later the same evening, Mother and Father separately attended E.’s band performance. Mother attended along with K. and Mother’s boyfriend. Mother testified that Father was standing up in the bleachers as they arrived, and then began recording them on his cell phone. Mother, K., and Mother’s boyfriend sat “a good distance away” from Father as he continued to record. Mother recounted that at some point during the performance, Father began yelling at K. to “get her attention.” Mother testified that she told Father to “stop” because he was “interrupting the performance[.]”

Conversely, Father testified that he “didn’t have any interaction” with K. before or during the band performance. Father stated that after the performance, he “yelled up to [K. and said,] ‘Hey [K.], I have your [softball] bats.’” Father then asked K. if she “want[ed] to come to [his] car” to retrieve the bats, but Mother yelled at Father to “go away.” Father explained that he returned to his car, retrieved the bats, and walked over to K., Mother, and Mother’s boyfriend, who had moved off the bleachers to join an ice cream social following the performance. When Father tried to hug K., K. backed away from him, avoiding his embrace, and told him that the bat he retrieved from his car was not hers.

During this exchange, Father and Mother also agreed to meet at Mother’s house after the event so that Father could pick up guns he left at her home. Father then returned to his car, obtained the correct bat, and brought it over to K. Father testified that when he brought the correct bat to K., he gave her a hug and a kiss on the forehead and told her he loved her, and that she hugged him back and appeared happy. Father also offered a still image taken by the school’s security camera that he described as occurring directly after his hug with K., in which Father appears to have his arm around K. Before Father left the school grounds, E. walked by with friends, and Father reached out to her, touched her on the back, and said, “Sweetheart, I love you.” E. did not respond. The court found that, in video footage taken by the school’s security camera, it appeared that K. “stepped back” and “recoiled from [Father] when he got close to her.”

After the social, Father drove to Mother’s house and waited for her to return home. The court watched residential security camera footage of the parties’ interaction when she

returned, which revealed the parties arguing with each other and Mother threatening to call the police if Father did not leave her property. Both E. and K. were inside the house during the argument. K. reported during her interview with the Washington County Department of Social Services (“DSS”) that she heard some arguing outside between her parents but did not see anything. E. reported during her DSS interview that she neither heard nor saw the argument between Mother and Father. Father left Mother’s house after the argument.

Text Messages

The parties also presented evidence of several text message conversations between Father, Mother, E., K., and Mother’s boyfriend in late July and early August of 2023.

In a text exchange between Mother, Father, and E. from approximately 10:00 p.m. to 11:00 p.m. on July 24, 2023, Father and Mother argued about Father’s ex-girlfriend:

MOTHER: [E.] is in bed btw so quit f[]cking texting[.]

FATHER: You are smarter than to say such dumb sh[]t.

FATHER: That’s funny... you had your own agenda all along=f[]cking insanity. This has been 12 years of your same, rt?

FATHER: [Father’s ex-girlfriend] has zero to do with being a good parent and doing what’s right for our children, right?

FATHER: I don’t understand how that text has anything good or productive to do with our girls?

MOTHER: [Father’s ex-girlfriend] definitely has zero to do with being a good parent. Might be the only honest thing you’ve ever said.

FATHER: I said she has zero to do with US good parenting our children... and yes, that is true. Thanks.

FATHER: Please focus on OUR lives and children and not others. I know you're in bed with [Mother's boyfriend] and doing [] your best to hurt people instead of helping [E.]... that is sadly your choice. I will address it with lawyers, judges, and the schools, since nobody wants t[o] be reasonable here.

FATHER: [Father's ex-girlfriend] was your bestie at whatever point suited you coming at me too... call a spade a spade :). Please explain that with US in front of the counselor, yes? Or say why not?

On July 26, 2023, between approximately 9:00 p.m. and 11:00 p.m., Father sent E. two photographs that Mother's boyfriend had sent to Father. One photograph appears to show Mother's boyfriend and another person mocking Father, while the other shows Mother's boyfriend and another person giving Father the middle finger in the other. The conversation below followed:

FATHER: The is the childish stuff they (with [Mother]) send to me and think bullying is funny. I have always taught you to be better and kinder. Just saying... this is not cool if you cared about me or family at all.

E.: [D]on't involve me in this drama. [T]hat's between you, [Mother's boyfriend], [Mother's boyfriend's friend], and [Mother]. I would not like to go to [Father's mother's home]. [P]lease stop texting me.

FATHER: That makes me sad, [because] I feel you would want to see [other family member], etc. [B]ut ok. I respect your feelings and wishes but you should know that you are basing your choice here on what these people are TELLING you.. and should see someday what is really going on. I love you always. How is camp going?

E.: [P]lease stop texting me.

FATHER: Why?

E.: [T]his is now going to be the third time I'm telling you, please stop texting me.

FATHER: Ok. I hear you. Third time? I don't understand but have NEVER been able to talk with you, that's very confusing... so... please explain why you want no communication or relationship with your dad and your family... that love you more than anything?

FATHER: I know how hard it is and what you are living right now. Promise. I know this is a hard line where you are and it must be hard... You can answer in time but I feel it is not based in our lives and reality of all of your past. That's all.

FATHER: Or at least the truth [of] it all. [man shrugging emoji]

FATHER: [] I can [] explain it, whenever you are ready. I love you sweet girl. You are kinder and nicer and better than this! Stay strong.

FATHER: I was about to bring this to court over school but maybe you will learn on your own. I hate to see you throw away ALL the years of hard work you have done and should be proud of... that hurts me to see.

FATHER: Sleep well and have a good day in band camp tomorrow.

FATHER: If you change your mind. [Family member] will be in town.. just reach out and I can come get ya. We would all love to see you.

FATHER: You could even stay down there.[] I have a crazy court and jury trial Monday, but you can stay with them/[Father's mother] any time you want...u[n]til we can't, of course. You should understand how that works at this age.

In an August 3, 2023 text conversation between Father, E., and K. from approximately 7:00 p.m. to 9:00 p.m., Father sent a photograph of Mother's boyfriend wearing a t-shirt that read: "Hookers and Cocaine[.]" The following exchange then occurred:

FATHER: Is this “cool” and funny? As a Father, it’s not the example I am going to let go. I love you girls.

E.: [W]hat you’re sending us is inappropriate. [P]lease stop involving us in you[r] adult drama. [Y]ou’re being a creeper, stop obsessing over [Mother] and the guys she hangs around.

FATHER: Obsessing? I don’t care about moving to the next guy before [Mother’s ex-boyfriend] is even gone a week... not my business, like [Mother’s ex-boyfriends], etc. I care about you. If it’s “inappropriate” then it shouldn’t be on the street corner[.] The school, Christian daycare, or family ice cream place, should it? You clearly agree calling it inappropriate.

E.: [W]hat you’re sending us is inappropriate. [P]lease stop involving us in you[r] adult drama. [Y]ou’re being a creeper, stop obsessing over [Mother] and the guys she hangs around.

FATHER: Yes, it is inappropriate and the MANY children and little girls in town shouldn’t have to see it all day without any choice, should they? Please explain how it’s inappropriate[?]

FATHER: Why do you think, [E.]?

E.: [W]hat you’re sending us is inappropriate. [P]lease stop involving us in you[r] adult drama.

FATHER: I care and respect you and your sister[’]s opinion of the content. So, why do you think that? What drama?

FATHER: And of all— so please explain?

At 12:21 a.m. on August 6, 2023, Father texted E., K., and Mother:

FATHER: [Mother’s boyfriend] threatened a known murder[er] to come kill and he is around ou[r] girls. You should be worried and smarter too[.]

Later the same morning, Father forwarded to Mother, E., and K. a photograph Mother’s boyfriend had posted to social media that appeared to mock Father. E. again replied to Father, “[W]hat you’re sending us is inappropriate. [P]lease stop involving me

and [K.] in you[r] adult drama.” Father then asked E. to explain what was inappropriate, and E. replied: “[W]e’re blocking you now.” K. responded, “Yeah.”

Mother’s Protective Order Petition

On August 7, 2023, Mother filed a petition in the Circuit Court for Washington County requesting a protective order against Father for herself and on behalf of E. and K. DSS subsequently conducted interviews with Mother, Father, E., and K.

In her interview with DSS, E. reported that when she saw Father talking to Mother at her band performance, she hoped he would not approach her and asked her friends to gather around her so that she could “hide” from Father’s view. E. told DSS that she did not speak to Father when she and her friends walked past him, but that he poked her in the back and said hello. E. also stated that she felt Father tried to “force her and [K.] to act nicer to him and act more like a family.” E. also stated that she “feels anxious being at [Father’s] house.”

In her separate interview with DSS, K. reported that Father “kept trying” to hug her when he returned her softball bat during E.’s band performance, but that she did not allow him to. She further stated that she “doesn’t want to be around [Father] and is anxious when at [Father’s] house.” K. explained that things are “bad” when Father is not “on their side[,]” and that Father’s ex-girlfriend would “make [Father] drink more” and instigate arguments with Mother about Father’s drinking.

Hearings And The Circuit Court’s Order

The circuit court held hearings regarding Mother’s request for protective orders against Father on August 14, August 25, September 28, and October 17, 2023. During

the August 25 hearing, E. testified that she tried to avoid Father at her band performance and that his presence made her feel “anxious” that Father would try to distract her. E. explained that Father “showed up” to the same performance the year before and she “forgot everything . . . all of [her] work.” E. testified that she felt “anxious and like a disgusted feeling” when she saw Father. E. further explained that she would have felt anxious seeing Father at the band performance even if Mother was not also present. E. stated that Father texted her “like almost every day[,]” that she asked him to stop texting her, and that she temporarily blocked his phone number. E. testified that Father’s continued messages made her feel “like what [she] say[s] [. . .] doesn’t have any weight to it[.]”

E. also testified that she no longer lived with Father part-time because of the frequent drinking and verbal fights that occurred at his house, often into the early hours of the morning. E. stated that she told Father “how [she] wanted him to stop drinking and he didn’t listen.” She further testified that she was “really tired of fighting all the time . . . [and she] couldn’t do a lot of things without getting in trouble[,] and [] there was always something that [she] was doing wrong.” E. clarified that Father never placed her in fear of bodily harm, although she had felt “unsafe” at Father’s house within the previous year and called someone to pick her up “a lot of times.” She stated that she did not want to speak with Father because she felt “smothered . . . like no matter how many times [she] was [] trying to get away, [she] just [] couldn’t.” K. did not testify.

On October 17, 2023, the circuit court granted two final protective orders for E. and K. against Father. The court found that although there was no evidence of physical

or sexual abuse committed against E. or K., there was “by a preponderance of the evidence . . . mental abuse of [K. and E.] based on the testimony provided by [E.] and [] the evidence that was seen by the court.” The court explained that, while not the only fact, Father’s texting “over the very direct protest of [E. and K.] to stop . . . was significant[,]” and ultimately pushed Father’s conduct “over the top.” The court continued, stating that it was granting a “six-month order only” forbidding Father from contacting or attempting to contact E. or K. “except as may be recommended by a therapist or health professional.” The court also ordered Mother and Father to participate in family therapy with E. and K.

Father filed a timely notice of appeal. We supplement with additional facts below as appropriate.

STANDARD OF REVIEW

When reviewing a trial court’s interpretation and application of the law, “we must make our own independent appraisal by reviewing the law and applying it to the facts of the case.” *C.M. v. J.M.*, 258 Md. App. 40, 58 (2023) (quoting *Piper v. Layman*, 125 Md. App. 745, 754 (1999)). Conversely, we accept the court’s factual findings unless clearly erroneous. *C.M.*, 258 Md. App. at 58.

A trial court’s findings of fact are not clearly erroneous so long as they are supported by substantial evidence. *Innerbichler v. Innerbichler*, 132 Md. App. 207, 230 (2000). As trial courts have the “opportunity to gauge and observe the witness’ behavior and testimony[,]” we are deferential to its factual findings. *Barton v. Hirshberg*, 137 Md. App. 1, 21 (2001) (internal citation omitted). “We must [also] consider evidence

produced at trial in a light most favorable to the prevailing party[.]” *Id.* (internal marks and quotations omitted). Additionally, “[i]n 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.’” *Hripunovs v. Maximova*, 263 Md. App. 263-64 (2024) (quoting *Omayaka v. Omayaka*, 417 Md. 643, 659 (2011)).

DISCUSSION

I. THE CIRCUIT COURT DID NOT ERR IN GRANTING THE FINAL PROTECTIVE ORDERS.

As we understand his brief, Father contends that the circuit court erred in granting the final protective orders because Father did not behave with the specific intent to harm E. or K.⁵ Father also claims that the court erred in granting the final protective orders because the court was presented with no “observable, identifiable, and substantial impairment of [E. or K.’s] mental or psychological ability to function.” We disagree and address each argument in turn.

⁵ While not addressed by Father, we note that the final protective orders challenged here were issued on October 17, 2023, and expired on April 17, 2024. To any extent the orders’ expiration renders this appeal moot, we nonetheless reach the merits of Father’s arguments. “[T]he expiration of [a] protective order does not automatically render the matter moot. The review of such finding on appeal, and the potential for vacation of the order, thereby removing the stigma [attached to a finding of domestic abuse] gives substance to the appeal.” *Piper*, 125 Md. App. at 745 (cleaned up).

A. Specific Intent To Harm Is Not A Requisite Element Of Child Abuse Mental Injury.

Father argues that the circuit court erred in finding mental abuse of E. and K. because “[Father] did not intend to cause any harm to the children by texting them late at night or by trying to defend himself to them.” Father cites to *C.M.* for the rule that “[b]oth physical and mental harm must be intentional[.]” 258 Md. App. at 57. Therefore, Father claims, because he did not intend to cause either E. or K. mental injury, the circuit court erred in granting the protective orders.

Father’s argument misconstrues the law. While Father correctly states that the alleged abuser must have acted “intentionally,” this means only that action taken mistakenly, accidentally, or inadvertently cannot be used to prove mental injury for purposes of establishing mental abuse of a child. *See C.M.*, 258 Md. App. at 57. The complete sentence and citations surrounding the intentionality rule in *C.M.* read:

“Both physical and mental harm must be intentional *and cannot be the product of an accident.* FL § 5-701(b)(2) (“‘Abuse’ does not include the physical injury of a child by accidental means.”) and *McClanahan v. Washington Cnty. Dep’t of Soc. Servs.*, 445 Md. 691, 705-06 [] (2015) (holding that a finding of an intent to harm is required in both mental and physical abuse cases).”

Id. (emphasis added). This Court then explained that “[t]he scienter requirement *can be* met by showing a parent acted in reckless disregard for the child’s welfare.” *Id.*

(emphasis added). Taken together, we understand *C.M.* to hold that enhanced scienter is sufficient, but not necessary, to meet the intentionality element of mental injury of a

minor. Thus, contrary to Father’s argument, *C.M.* does not stand for the rule that specific intent is required to prove the intent element of child abuse mental injury.

We also note that, after *McClanahan*, the General Assembly amended the definition of mental injury of a minor to include “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.*” Md. Code Ann., Fam. L. (“FL”) § 5-701(r) (emphasis added); *see* 2017 Md. Laws Ch. 651 (H.B. 1263) (adding emphasized language). The Supreme Court of Maryland later recognized that “these changes were made in response to [the] holding in *McClanahan*” requiring intent to harm or reckless disregard as an element of mental injury under FL § 5-701(r). *State v. Krikstan*, 483 Md. 43, 87 n.17 (2023). Therefore, considering the statutory change and case law post-*McClanahan*, FL § 5-701(r) does not require enhanced scienter to the intentionality element, but rather only requires that the alleged abuser did not accidentally engage in the harmful act(s).

Here, the circuit court’s finding that Father mentally abused E. and K. was based on Father’s texting “over the very direct protest of [E. and K.] to stop[.]” We, accordingly, hold that because there was no dispute that Father’s conduct was not mistaken or accidental, the circuit court did not err in granting the final protective orders for E. and K.

B. The Record Contains Substantial Evidence That Father Mentally Abused E. And K.

Father also challenges factual findings made by the circuit court. He contends that “the record is devoid of any evidence of any observable, identifiable, and substantial impairment of either child’s mental or psychological ability to function whatsoever.” In particular, Father argues that the text messages did “not cross the line into mental abuse of a child[.]” and that the DSS interviews with the children “indicate that there is no fear or abuse, mental or otherwise, there is only general anxiety due to the conflict that previously existed when the ex-girlfriend had been involved or between their parents.” Father characterizes E. as experiencing “general annoyance and . . . generalized anxiety due to the conflict between her parents[.]” He explains this anxiety as “the unfortunate nature of most custody disputes.” Father also claims that “[t]here is simply a complete absence or testimony about any actual harm to [K.]”

A party seeking a final protective order must show “by a preponderance of the evidence that the alleged abuse has occurred[.]” FL § 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 substantial risk of being harmed[.]” FL § 5-701(b)(1)(i); *see* FL §§ 4-501(b)(1)-(2) (defining “abuse” and noting that, where the victim is a child, the definition of abuse may also include § 5-701, which defines “abuse of a child”). “[M]ental injury” of a child is 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.” FL § 5-701(r).

Regarding its judgment as to E., the circuit court credited E.’s testimony, finding that E. was “suffering repercussions of anxiety, severe anxiety by [. . .] [Father’s] continued proaction[.]” With regard to mental injury suffered by K., the court reviewed K.’s interview with DSS, read text messages K. received from Father, watched security camera footage showing K. “recoil[ing]” at Father’s approach, and heard Mother’s testimony regarding K.’s behavior toward Father. In particular, the court found that Father’s text messages put his conduct “over the top[,]” as Father repeatedly continued to contact both E. and K. over “very direct protest [. . .] to stop and to leave them out of this whole thing.”

Given our highly deferential review of a circuit court’s findings of fact in favor of the prevailing party, *C.M.*, 258 Md. App. at 58 and *Barton*, 137 Md. App. at 21, and the power of trial courts to “accept—or reject—*all, part, or none* of the testimony of any witness,” *Hripunovs*, 263 Md. App. at 263, we conclude that there exists substantial evidence in the record to support the circuit court’s factual findings. Accordingly, the circuit court did not clearly err, and we affirm.

CONCLUSION

We hold that the intent element of FL § 5-701(r) only requires the accuser to prove, by a preponderance of the evidence, that the alleged abuser did not accidentally engage in the harmful act(s). As there is no dispute that Father intentionally engaged in

the harmful acts, and because the circuit court did not otherwise clearly err in its factual findings, we affirm.

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