

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 2043

September Term, 2023

SHAILA E. SETTLES LEWIS

v.

DAVID L. LEWIS

Berger,
Nazarian,
Ripken,

JJ.

Opinion by Ripken, J.

Filed: January 14, 2025

*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 matter arises from a petition filed under Maryland Code (1984, 2019 Repl. Vol.), section 4-504 of the Family Law Article (“FL”) in the Circuit Court for Prince George’s County. The petition did not allege that abuse under the statute had occurred or was likely to occur; nor did the petition seek relief in the form of a protective order allowed under the statute, instead seeking other interim injunctive relief relating to the parties’ minor child and enforcement of an existing custody order. The circuit court, concluding that FL section 4-504 did not apply, denied the petition without a hearing. This timely appeal followed.

ISSUES PRESENTED FOR REVIEW

Appellant has presented four questions for our review, which we have consolidated into the following question:

Whether the circuit court erred in denying Appellant’s motion for a protective order.¹

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

¹ Rephrased and consolidated from:

- I. Whether the Prince George’s County Circuit Court erred in holding that it lacks jurisdiction over the case, that venue is improper, that [the] Prince George’s County [Circuit Court] is an inconvenient forum to adjudicate the matter, and that [the] Montgomery County Circuit Court has jurisdiction over the case.
- II. Whether the Prince George’s County Circuit Court erred in holding that § 4-504 of the Maryland Family Law Code [sic] is not applicable.
- III. Alternatively, whether the Prince George’s County Circuit Court erred in denying the Emergency Petition for Temporary Restraining Order and Preliminary Injunction and/or Amended Emergency Petition for Temporary Restraining Order and Preliminary Injunction on the ground that the burden under Md. Rule [] 15-504(a) was not met.
- IV. Whether the Prince George’s County Circuit Court violated Md. Rule []2-311 by not holding a hearing.

FACTUAL AND PROCEDURAL BACKGROUND

Previous Proceedings

Shaila Settles Lewis (“Mother”) and David Lewis (“Father”) are parents to two minor children. One of their children—Y.,² now nearly 14 years old—has been diagnosed with bilateral hearing loss and has a surgically implanted cochlear implant.

Mother and Father were parties to a divorce action in the Circuit Court for Montgomery County (“the child custody case”). In the child custody case, a custody order was entered regarding the parties’ minor children. That order divided physical custody of the children equally between the parties and ordered that the parties share legal custody. The court granted tie-breaking authority to Father. Pursuant to the Uniform Child Custody Jurisdiction and Enforcement Act, the Circuit Court for Montgomery County, as the court that made the initial child custody determination, retained “exclusive, continuing jurisdiction” over that determination. FL § 9.5-202(a).

Prince George’s County Case

On November 28, 2023, Mother filed what she called an “Emergency Petition for Temporary Restraining Order and Preliminary Injunction,” seeking relief under the domestic violence statute. Mother asserted that Father had enrolled Y. in contact sports. She sought an emergency temporary restraining order and preliminary injunction prohibiting Father from enrolling Y. in contact sports, allowing Y. to play contact sports or otherwise “from taking [Y.] to medical appointments without notice to [Mother], in

² To preserve the anonymity of the minor child, we refer to the child by the randomly selected letter “Y.”

violation of the Custody Order.” Mother asserted that one risk of contact sports was head trauma, and because of the procedure to implant Y.’s cochlear device, Y. was at risk of “severe injury” if she were allowed to play in contact sports. Although Mother asserted that Father “insisted” Y. play contact sports, she did not assert that enrolling Y. in contact sports was abuse or neglect. Nor did Mother request a hearing in this motion.³

On December 1, 2023, Mother filed what she styled as a “Motion to Shorten Time and Request for Expedited Hearing[,]” seeking to shorten Father’s time to respond to her Petition. Mother did not indicate by how much she sought to reduce Father’s response time; nor did she indicate for which motion she sought the hearing. The circuit court denied this motion.

The circuit court entered an order on December 12, 2023, denying Mother’s amended petition for an amended restraining order. The court noted that Mother was seeking a temporary restraining order and preliminary injunction enjoining Father “from enrolling [Y.] in contact sports, allowing [Y.] to play contact sports at school or otherwise” and “taking [Y.] to medical appointments without providing notice to [Mother] in violation of [the custody order].” (internal quotation marks omitted). The court then made several findings. First, the court found that section 4-504 of the Family Law Article—the portion of the Family Law Article addressing domestic violence and petitions—was “not applicable.” The court then found that the Circuit Court for Prince George’s County lacked jurisdiction because the Circuit Court for Montgomery County had entered the custody

³ Mother amended the petition the following day where the only change was to the language Mother’s oath at the conclusion of the petition.

order. The court indicated that Mother had not demonstrated that she, Father, or Y. lived or went to school in Prince George’s County, and that Prince George’s County was an “inconvenient forum” to adjudicate the matter. The court found that Mother had failed to meet her burden under Maryland Rule 15-504(a), and therefore denied the petition.

Mother filed this timely appeal.

DISCUSSION

A. Contentions

Mother asserts that the circuit court erred in denying her petition. She claims that the circuit court was incorrect in holding that FL section 4-504 did not apply because, in her view, there was evidence to suggest that Y.’s enrollment in contact sports placed her in imminent risk of serious bodily harm.⁴ She restates her argument regarding the risk of injury in contact sports to children with cochlear implants, claiming that she met her burden to qualify for interim injunctive relief under Maryland Rule 15-504. Mother contends that the circuit court erred in concluding that it did not have jurisdiction over the matter.

Father did not file a brief in this matter.

B. Standard of Review

“A trial court may grant a final protective order if there is a finding by a preponderance of the evidence that the alleged abuse has occurred.” *Hripunovs v. Maximova*, 263 Md. App. 244, 261 (2024) (citing FL § 4-506(c)) (internal quotation marks omitted). On appellate review, factual findings made by the trial court are accepted “unless

⁴ Mother also argues that the circuit court “violated” Maryland Rule 2-311(f) by not holding a hearing before denying her petition.

they are clearly erroneous.” *Id.* (quoting *C.M. v. J.M.*, 258 Md. App. 40, 58 (2023)) (further citation omitted). As to the trial court’s conclusion, this Court must make its own “independent appraisal by reviewing the law and applying it to the facts of the case.” *Id.* (quoting *C.M.*, 258 Md. App. at 40) (further citation omitted).

C. Analysis

i. Eligibility for protective order

Under FL section 4-504, a person eligible for relief may file a petition for relief from abuse to obtain a protective order if the abuse is alleged to have occurred in the State of Maryland, or if the person eligible for relief is a resident of the State of Maryland. FL § 4-504(a)(2).⁵ The petition must be under oath and must include any information known to the petitioner regarding “the nature and extent of the abuse for which the relief is being sought[.]” FL § 4-504(b). Abuse under the domestic violence statute can include “an act that causes serious bodily harm” and “an act that places a person eligible for relief in fear of imminent serious bodily harm[.]” FL § 4-501(b). If relief is being sought for a child, abuse can also include physical 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).⁶ Abuse does not include the physical injury of a child by accidental means. *Id.*

⁵ Incidentally, Mother failed to allege either that the conduct complained of occurred in Maryland or that Y., as the person eligible for relief, resided in Maryland.

⁶ *See* FL § 4-501(b)(2).

Here, Mother did not allege that any abuse—as defined under the statute—had occurred or was likely to occur. Mother asserted that Y. had a cochlear implant and that due to her cochlear implant, she was at increased risk of injury from contact sports. That assertion did not suggest that Father had committed an “act that cause[d] serious bodily harm” to Y.; nor that Y. was placed “in fear of imminent serious bodily harm.” *See* FL § 4-501(b). Neither did Mother contend that Y. had suffered a physical injury under circumstances that indicate Y.’s health or welfare was harmed by Father. *See* FL § 5-701(b). In fact, any injury that Mother suggested could occur would have been an accidental injury, occurring as part of Y.’s participation in children’s sports. The conduct Mother complained of—Father enrolling Y. in basketball—does not qualify as abuse under the domestic violence statute, and we are unaware of any case in Maryland that suggests otherwise.⁷ The circuit court did not abuse its discretion in concluding that FL section 4-504 was inapplicable and denying Mother’s petition on that basis.

ii. Availability of injunctive relief

Next, even if Mother alleged that abuse had occurred, the forms of relief she sought—a temporary restraining order and a preliminary injunction—are not available under the domestic violence statute. The purpose of the domestic violence statute is to protect victims by preventing future abuse. *Coburn v. Coburn*, 342 Md. 244, 252 (1996). To that end, the statute “provides for a wide variety and scope of available remedies

⁷ For the same reason, because the petition filed under FL section 4-504 did not meet the definition of abuse under the statute, the court did not abuse its discretion in denying the petition without holding a hearing.

*designed to separate the parties and avoid future abuse.” Id. (emphasis added). Relief available under the domestic violence statute is effectuated through protective orders, which can include, *inter alia*, requirements that a respondent refrain from abusing, contacting, or approaching the person eligible for relief. See generally FL §§ 4-505 and 4-506. Protective orders can also be used to award temporary custody of minor children and to temporarily require that a respondent vacate a shared home. See *id.**

This type of relief is in contrast with preliminary injunctions and temporary restraining orders available under Maryland Rules 15-504 and 15-505. For both of these types of interim injunction, the moving party must demonstrate that there is a real probability that the moving party will succeed on the merits; that any injury suffered from the interlocutory injunction is less than the harm that would result from its refusal; that the party seeking the injunction will suffer irreparable injury if relief is not granted; and that granting the injunction would be in the public interest. See *Ehrlich v. Perez*, 394 Md. 691, 707–08 (2006); see also Md. Rule 15-504(a).⁸

Here, Mother’s petition failed in a variety of ways. First, as indicated previously, the relief Mother sought was under the domestic violence statute, which offers relief in the form of protective orders, not temporary restraining orders or preliminary injunctions. Second, assuming *arguendo* that the injunctive relief she sought in her petition was

⁸ As relevant here, the primary difference between a temporary restraining order and a preliminary injunction is that a temporary restraining order may be granted without a full adversary hearing, whereas a preliminary injunction may only be granted after a full adversary hearing, but before a final determination of the merits of the action. See Md. Rule 15-501.

available, Mother’s petition would fail because she did not demonstrate a likelihood of success on the merits—both because her claim was based on FL section 4-504 but did not facially assert abuse, and because she sought temporary injunctive relief without seeking final injunctive relief. The failure of a moving party to prove the existence of “even one” of the four factors precludes the grant of injunctive relief. *Ehrlich*, 394 Md. at 708 (internal citation omitted). Because Mother’s petition failed to allege a basis for relief available in the law, the circuit court did not err in denying the petition.

iii. Jurisdiction

Finally, the relief Mother sought related to enforcement of the custody order entered by the Circuit Court for Montgomery County. The trial court was correct that it did not have jurisdiction over the custody order because a court in another jurisdiction—Montgomery County—had exclusive, continuing jurisdiction until otherwise determined. *See* FL § 9.5-202 (stating that with limited exceptions, “a court of this State that has made a child custody determination . . . has exclusive, continuing jurisdiction over the determination[.]”). A court without jurisdiction may exercise temporary emergency jurisdiction “if the child is present in this State and . . . it is necessary in an emergency to protect the child because the child . . . is subjected to or threatened with mistreatment or abuse”; however, as already explained, Mother did not allege that Y. was being mistreated

or abused.⁹ FL § 9.5-204(a). Therefore, the Circuit Court for Prince George's County was correct that it did not have jurisdiction as related to enforcing the custody order.

**JUDGMENT OF THE CIRCUIT COURT
FOR PRINCE GEORGE'S COUNTY
AFFIRMED. COSTS TO BE PAID BY
APPELLANT.**

⁹ Incidentally, Mother also did not allege that Y. was present in the State of Maryland, as required for a court of this State to exercise temporary emergency jurisdiction. *See* FL § 9.5-204(a).