

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 0280

September Term, 2015

CHENILLE BILLINGS

v.

CLAYTON DUCKETT

Meredith,
Berger,
Salmon, James P.
(Retired, Specially Assigned),

JJ.

Opinion by Salmon, J.

Filed: December 4, 2015

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of *stare decisis* or as persuasive authority. Md. Rule 1-104.

On March 9, 2015, Clayton Duckett (hereinafter “Duckett”) filed a petition for protection from domestic violence against Chenille Billings (hereinafter “Billings”), also known as Chenille Billings-Opoku. The petition was filed in the Circuit Court for Prince George’s County. On the same day the petition was filed, the court granted Duckett a temporary protective order. A hearing on a final protective order was held on March 16, 2015, after which the court granted protection to Duckett and the parties’ minor children, Elijah and Isaiah, granted custody of the children to Duckett, granted supervised visitation to Billings, prohibited Billings from contacting Duckett except to facilitate visitation, and prohibited Billings from abusing, threatening to abuse, or harassing the children. Billings then filed this timely appeal.¹

ISSUES PRESENTED

Billings presents three issues for our consideration, which we have reordered and rephrased as follows:

- I. Did the circuit court have jurisdiction to consider Duckett’s request for a protective order?
- II. Did the circuit court err in determining that there was sufficient evidence to support the issuance of a protective order against Billings?
- III. Did the circuit court err in granting Duckett custody of the children when the children testified that Duckett beat them and there was no finding that there was not a likelihood of abuse by Duckett?

¹No brief was filed by Duckett.

For the reasons that follow, we shall vacate the protective order and remand for further proceedings consistent with this opinion.

FACTUAL BACKGROUND

Duckett and Billings are the biological parents of Elijah, born December 11, 2003, and Isaiah, born November 26, 2004. The record does not reveal whether Duckett and Billings were ever married, but at all times relevant to this case, Billings lived in the District of Columbia, Duckett lived in Maryland, and the children lived in the District of Columbia with Billings and visited regularly with Duckett.²

On March 9, 2015, Duckett filed a petition requesting protection from child abuse. He alleged that Elijah and Isaiah told him and their paternal grandmother, Patricia Duckett, that they had been abused by their mother. Duckett's petition for protection from child abuse included the following allegations: (1) Billings made Elijah put his head between the mattress and box spring "while she whooped" him; which caused Elijah to have trouble breathing and to have a sore neck for a week; (2) On an unspecified date, Billings became upset with Isaiah and told him to get out of her house because she did not want to deal with him anymore; (3) After "kicking Isaiah out" of the house, Billings left and went to the store but when she returned, Isaiah was with a police officer; (4) Billings choked and punched Isaiah

² It is undisputed that in 2007, the District Court of Maryland for Prince George's County found by clear and convincing evidence that Duckett had committed assault against Billings. The court granted a protective order in favor of Billings and, among other things, awarded Billings temporary custody of Elijah and Isaiah.

causing his nose to bleed and, according to Duckett, this was not the first time Billings choked Isaiah; (5) When Billings “whoops” Isaiah, she makes him lay across the bed while she sits on his head and “whoops” him; (6) Billings “whoops” Elijah and Isaiah with a back scratcher, paint stirrer, switches, and a bamboo stick; (7) Elijah and Isaiah are left at home “a lot” and are not allowed to go to sleep until Billings gets home around 9-10 p.m.; (8) Isaiah told Duckett that on one occasion his mother was angry and could not find “the normal items she whoops them with,” so she started hitting him with her hands. (9) Once, Isaiah fell to the ground and Billings “began kicking him,” which caused Elijah to become so scared and upset that he hid in the bathroom; and, (10) Billings told Elijah and Isaiah that she understands why the lady on the news chopped up her kids and put them in the freezer. In Duckett’s petition, no dates were indicated as to when Billings’ action occurred.

At the March 16, 2015 hearing on the final protective order, Duckett testified that a couple of weeks earlier, Elijah and Isaiah stayed at his mother’s house while he was “out of town.” His mother called him to let him know that the children had told her “some things that were concerning.” The following week when Duckett picked up the children from Billings, Elijah was “angry” and said that he was not going back to his mother’s house and that if he did go back there he would run away. Elijah explained to Duckett that Billings put his head “in between the mattress when he got in trouble and she whipped him.” Isaiah told Duckett that when he got in trouble Billings made him lay across the bed and his mother sat on his head while she whipped him. According to Duckett’s testimony, the children told him

that Billings whipped them with a switch, a back scratcher, a paint stirrer, and a bamboo stick. Isaiah told Duckett that Billings choked him and punched him in the face until his nose started to bleed. Duckett observed and photographed a mark on Isaiah's "behind" which had been there for over a year. Duckett also provided the following testimony in support of his request for a protective order against Billings:

Once my son also stated that one time he got in trouble for something and his mother said she tired of, she's tired of him, it was cold, she sent, said get out of my house, she sent him outside, he was outside crying in his pajamas. Once she sent him outside she went to the store, or she went somewhere, by the time she came back a lady had passed by and was like why is this child outside crying? So, she called the police. By the times she came back the police officer was there. I don't know what she told him to make him not file a report, but I'm not sure if there's a report or not.

My youngest son, Isaiah, also stated one time she couldn't find the normal items she whips them with, and so she began punching him, when he fell she began kicking him. My oldest son said when he saw that he ran in the bathroom, locked the door, and started crying. She also, from what my children are saying, she also stated I understand why that lady chopped up her children and put them in a freezer.

My kids are left alone in the house, she works. I understand, but they are left alone in the house, after they get, they get out of school at 3:15, and certain days after she gets off of work she goes to the gym, so she's not getting home till 9:00, 10 o'clock, and they are forced to stay awake until she gets home so she can check their chores.

I'm sorry, I'm just reading the notes that I have. The last week when I came here and I was granted the temporary custody from there I went to their school to explain what was going on, and let them know they won't be in school for a week or so until this case is over with, so I went and got all their school work and everything they needed to make sure their grade [sic] didn't fall. I also went to their primary care physician and I found out that the kids haven't had shots or their physicals since 2013. My oldest son has asthma,

they still need him to come in so he can get his asthma checked out. I also found out they didn't have health insurance, also, so immediately after I left there I went and got them health insurance in Maryland since I live in Maryland.

As far as the abuse, that's all I have at the moment.

Billings testified at the hearing and denied the allegations against her. She stated that she had been interviewed by a representative from "Child and Family Services" in the District of Columbia who "found the allegations" against her "to be unsubstantiated."³ She explained that Elijah and Isaiah, who were ten and eleven years old at the time of the hearing, had lived with her in the District of Columbia since 2010. The boys were enrolled in after school activities that ended at 6 p.m. Billings got off work at 6 p.m. and arrived home at 7:30 p.m. at the latest, although she arrived home before that "most times." Billings stated that she checked the website for the District of Columbia and learned that "there is no age requirement" and that "it is at the discretion of the parent if the children are mature enough to watch themselves for a few hours."

Billings testified that it was "very rare" that she hit the children and that she usually disciplined them by taking away privileges and assigning extra chores. She maintained that

³ At the March 16, 2015 hearing, the judge appears to have received a report from the Prince George's County Department of Social Services that referred the case to authorities in the District of Columbia. The report from the District of Columbia's Child and Family Services Agency was not available at the time of the hearing and, therefore, is not a part of the record before us, although Billings included a copy of it in an appendix to her brief. The report, although favorable to Billings, has not been considered because it is not part of the record.

the bruise on Isaiah's back was caused when he fell against the rails on his bunk bed. She specifically denied the allegation that she put her son's head under her mattress. She produced photographs of her bed showing that she did not have a regular mattress and box spring set and that her box spring was made out of wood. Billings testified that the story about the mattress was told to her and other members of her family as something that her grandfather had done to their parents. Billings claimed that although she filed for child support in 2010, Duckett did not consistently pay it, had not paid it in six months, and was \$6,000 in arrears. Further, although Duckett offered to take the children to their medical appointments, he had missed every appointment that had been scheduled.

As for the allegation that she locked Isaiah out of the house, Billings stated:

[W]e were in the house, I can't remember exactly what the situation was, but he continuously lied to me, and it wasn't at night, it was during the day. It was during the summertime, and I told, I said to my son that I knew he had did whatever it was that we were talking about, and all I want you to do is tell me the truth, and he continued to lie. And I told him, I said you go and you sit on the front porch and you figure out why you can't tell me the truth. Two minutes after I asked my son to go sit on the porch and think about him lying and why he can't tell me the truth, . . . I came outside and I said are you ready to talk, and he was just sitting there crying; I said I'm getting ready to go to the corner store, I'll be right back. The corner store isn't three minutes from my house, literally the corner store isn't three minutes from my house; and when I went in the corner store, I purchased a soda, and I came back out, there were two officers there, one of the officers asked me was that my child, I said yes, it is. And then he said well, we got a call that a child was abandoned, I said well, he isn't abandoned, we live here; and then he said well, why is he on the front porch. I said I asked him to come outside and think about why he feels the need to lie to me. And he said well, is the door locked, I said no, it isn't. And then at that time I asked my son to go in the house and get my cell phone. The officer asked me, you know, did I kick him

out, did I lock him out, and I told him no, I didn't. When my son went in the house to get the cell phone that showed the officer that the door wasn't locked, I stood there with the officer and they pretty much just left after that.

Duckett responded to Billings's testimony, stating:

As far as the kids living by, I mean, living, but being in the house by themselves, I understand that there's no age limit, but the area she lives in, Southeast D.C., it's the 22nd worst neighborhood in the United States. Recently her downstairs door was kicked in, and the neighbors downstairs were robbed. So, I just don't feel comfortable, comfortable with them being in the house by themselves. One.

As far as the child support, at the time she took me for child support, I told her to take me for child support because I wasn't working, and I said I'm going to pay the arrears and catch myself back up, as long as the kids have what they need.

And she says that she tried to talk to me a couple of times about the kids' welfare and whatever she needs to speak with me about, nine times out of 10 when she called me it was when I was at work and I couldn't talk at the time, and I say I'll call you later, and sometimes, I'm not going to lie, sometimes I did forget to call her back, and sometimes, the other times we spoke, and when we speak it's always about things that happened in the past, our relationship that has nothing to do with the kids. So, at that time I get frustrated, you know what, I don't want to talk anymore because it's not about the issue at hand, which are the kids, it's about us.

The bruise on his behind has been there for over a year. I work in the school system, level five, like high rollers and all that. I understand, and I, we come from the old school, I understand what a switch mark to look like, and for that mark to still be there over a year it had to be severe. So, I still do not believe that that was caused from a bunk bed rail, that don't even look like a bunk bed rail mark.

It is unclear whether Elijah and Isaiah were present in the courtroom when Duckett and Billings testified. At the conclusion of Duckett and Billings's testimony, the judge asked "everyone to leave the courtroom except the two young men, and have them come up here." Duckett responded by asking, "Elijah out there?" He then stated, "I'm going to say this so

the Judge can hear me, when you go in there tell the truth, be honest, and everything will work out, okay?” The judge then proceeded to question both Elijah and Isaiah on the record.

Elijah stated that he was afraid to return to his mother’s home because he and his brother always get in trouble and their mother whips them. On one occasion, his mother put his head in between the mattress and whipped him and he “couldn’t move [his] head for a week.” Elijah told the judge that his mother put Isaiah’s “head through the mattress” with the wood at the bottom. According to Elijah, Isaiah did not get the “mark on his butt” from the bunk bed, but from his mother who had whipped him. Isaiah explained that his mother whipped him because he got in trouble at school for talking. The judge questioned the boys as follows:

THE COURT: Is that the report? Very good. Thank you. Now, what does your dad do if you get in trouble? How does he punish you?

[ISAIAH]: My dad would tell us go stand in the corner; sometimes he would beat us, or well, he would talk to us and tell us what not to do and what to do.

[ELIJAH]: He mostly talks to us, or if he get angry he goes somewhere so he doesn’t --

[ISAIAH]: Because, because he says he doesn’t believe in beating his kids.

[ELIJAH]: He only beat us about once or twice, and only.

THE COURT: Okay. So, you haven’t been in school, correct?

[ELIJAH]: Yes.

THE COURT: So, what do you think about changing schools? You’d have to change schools.

[ELIJAH]: Good, because the school that we go to –

[ISAIAH]: They really don't teach.

[ELIJAH]: Yeah, and it's a bad school, the kids in there take medicine and stuff.

THE COURT: Okay.

[ELIJAH]: And they have anger management crisis for the kids.

THE COURT: Thank you very much for talking to me. You can just go sit back in the courtroom and Mr. Long (phonetic sp.), you can ask everyone else to come back in.

After speaking with Elijah and Isaiah, the court addressed Billings, saying, “ma’am, the children basically confirmed everything that had been said here.” The court went on to say that it was “inclined to grant the final protective order today, have the children move in with their father, and then you can deal with whatever you feel is appropriate.” Billings asked if there was any way the social worker from the District of Columbia could be contacted because she had found Duckett’s allegations of abuse and neglect to be unsubstantiated, but the judge said that the social worker’s opinion would not change her decision. The judge explained that the fact that the children were “afraid to go home” with Billings is “what speaks to me.” The judge stated that her job was “to do what I think is in the best interests of the children, and not take any chances[.]”

The court granted a protective order effective until March 17, 2016, granted Duckett custody of the both children, and awarded Billings visitation to be supervised by the District of Columbia’s child protective services agency.

DISCUSSION

I.

Billings contends that the circuit court did not have jurisdiction to consider Duckett’s request for a protective order. We disagree.

The issuance of a protective order is governed by Md. Code (2012 Repl. Vol.) Family Law Article section 4-506, which provides, in relevant part:

- (c) *Issuance.* – (1) If the respondent appears before the court at a protective order hearing or has been served with an interim or temporary protective order, or the court otherwise has personal jurisdiction over the respondent, the judge:
- (i) may proceed with the final protective order hearing; and
 - (ii) if the judge finds by a preponderance of the evidence that the alleged abuse has occurred, or if the respondent consents to the entry of a protective order, the judge may grant a final protective order to protect any person eligible for relief from abuse.

Md. Code (2012 Repl. Vol.) §4-506(c) of the Family Law Article (“FL”).

Maryland courts are granted temporary jurisdiction in cases of emergency pursuant to FL §9.5-204, which provides, in part:

- (a) *Grounds.* – A court of this state has temporary emergency jurisdiction if the child is present in this State and the child has been abandoned or it is necessary in an emergency to protect the child because the child, or a sibling or parent of the child, is subjected to or threatened with mistreatment or abuse.

Here, Billings appeared before the court at the hearing on the final protective order and did not raise any issue concerning personal jurisdiction. At the time of the hearing, the children were staying in Prince George’s County, Maryland with their father, who alleged acts of abuse against the children by their mother. The circuit court therefore obtained temporary emergency jurisdiction to protect Elijah and Isaiah and properly proceeded with the final protective order hearing.

II.

Billings next contends that there was insufficient evidence to support the issuance of a protective order against her. In reviewing an action tried without a jury, we review the case on both the law and the evidence. Md. Rule 8-131(c). We “will not set aside the judgment of the trial court on the evidence unless clearly erroneous, and will give due regard to the opportunity of the trial court to judge the credibility of the witnesses.” *Id.* We view the evidence in a light most favorable to the prevailing party and if substantial evidence was presented to support the trial court’s determination, it is not clearly erroneous and cannot be disturbed. *L.W. Wolfe Enters. Inc. v. Md. Nat’l Golf*, 165 Md. App. 339, 343 (2005)(citations omitted).

Pursuant to FL §4-506(c)(1)(ii), the circuit court was required to find by a preponderance of the evidence that the alleged abuse occurred. As mentioned, in deciding to grant the final protective order, the judge explained that “the children basically confirmed everything that had been said” at the hearing. This was not true. In its written order, the court

found that Billings physically abused both Elijah and Isaiah “[o]ver the last year” by whipping them and leaving one child outside the home.

The standard of proof by a preponderance of the evidence is defined succinctly in the Maryland Civil Pattern Jury Instructions as follows:

In order to prove something by a preponderance of the evidence a party must prove that it is more likely so than not so. In other words, a preponderance of the evidence means such evidence which, when considered and compared with the evidence opposed to it, has more convincing force and produces in your minds a belief that it is more likely true than not true.

Maryland Civil Pattern Jury Instruction 1:12 (4th ed. 2013 Supp.).

In the subtitle governing domestic violence, abuse is defined as follows:

- (1) “Abuse” means any of the following acts:
 - (i) an act that causes serious bodily harm;
 - (ii) an act that places a person eligible for relief in fear of imminent serious bodily harm;
 - (iii) assault in any degree;

* * *

- (2) If the person for whom relief is sought is a child, “abuse” may also include abuse of a child, as defined in Title 5, Subtitle 7 of this article. Nothing 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.

FL §4-501(b).

Abuse is defined in FL §5-701(b), as “the physical or mental injury of a child by any parent or other person who has permanent or temporary care or custody or responsibility for

supervision of a child, or by any household or family member, under circumstances that indicate that the child’s health or welfare is harmed or at substantial risk of being harmed[.]”⁴

Aside from Duckett’s allegations, which were based on what his mother and the children told him, there was absolutely no evidence presented that Billings ever sat on the boys’ heads, choked or punched Isaiah causing his nose to bleed, or hit the boys with a back scratcher, paint stirrer, switch, bamboo stick, or any other item. Nor was there any evidence presented that Billings kicked the boys or told them about a woman who chopped up her kids and put them in a freezer. Neither of the boys spoke about Isaiah being left out on a porch or about being left alone for long periods of time. Billings’s testimony about leaving Isaiah on the porch was not contradicted by the children nor was her testimony about the amount of time the boys spent alone at home before she returned from work. Thus, the court’s conclusion that the children’s statements “basically confirmed everything that had been said here,” and its finding of abuse based on an incident of “leaving one child outside the home,” were clearly erroneous.

The court’s order did not make any reference to the allegation that Elijah and Isaiah had their heads put under or through a mattress. The order only referenced physical child abuse, as follows: “[o]ver the last year, incidents of whipping children & leaving one child

⁴ Similarly, §3-801(b) of the Courts and Judicial Proceedings Article, which addresses Child in Need of Assistance cases, defines abuse to include the “[p]hysical or mental injury of a child under circumstances that indicate that the child’s health or welfare is harmed or is at substantial risk of being harmed[.]”

outside the home occurred.” The only direct evidence that the children were “whipped” was provided by Elijah and Isaiah. Elijah stated that he was afraid to return to Billings’s house and that she put his head and Isaiah’s head “between the mattress,” or “through the mattress” with the wood at the bottom, and whipped them. Elijah stated that after his mother did this to him, he could not move his head for a week. Isaiah stated only that his mother whipped him because he got in trouble at school for talking. Elijah testified that the mark on Isaiah’s backside was the result of his mother whipping Isaiah. There was no evidence detailing how or when the boys were whipped.

Evidence that Billings whipped, whooped, or struck the boys was not sufficient, standing alone, to support a conclusion that Elijah and Isaiah were abused. FL §4-501(b) does not prohibit a parent from imposing reasonable punishment, including reasonable corporal punishment, in light of the age and condition of the child. *Taylor v. State*, 347 Md. 363, 371 (1997). The court did not address whether Billings’s whippings constituted reasonable corporal punishment. Nor did the court make a determination as to whether one or both of the boys suffered serious physical harm or whether they were placed in fear of imminent serious physical harm. On remand, the court should determine the nature of the whippings, whether they constituted reasonable corporal punishment, and whether the evidence supported a finding of serious physical harm or fear of imminent serious physical harm.

III.

Billings' final contention is that the circuit court erred in granting Duckett custody of the children because it failed to find that there was no likelihood of abuse by Duckett. We agree and explain.

Section 9-101 of the Family Law Article provides:

(a) *Determination by court.* – In any custody or visitation proceeding, if the court has reasonable grounds to believe that a child has been abused or neglected by a party to the proceeding, the court shall determine whether abuse or neglect is likely to occur if custody or visitation rights are granted to the party.

(b) *Specific finding required.* – Unless the court specifically finds that there is no likelihood of further child abuse or neglect by the party, the court shall deny custody or visitation rights to that party, except that the court may approve a supervised visitation arrangement that assures the safety and the physiological, psychological, and emotional well-being of the child.

Elijah and Isaiah each acknowledged that Duckett beat them. Yet, the circuit court did not question either of the boys about the nature, severity, or frequency of those beatings and no determination was made as to whether those beatings constituted reasonable corporal punishment or abuse. Before granting custody of the boys to Duckett, it was incumbent upon the court to determine whether the boys' father had abused them and make a specific finding as to whether there was any likelihood of further abuse by Duckett.

For the above reasons, we shall vacate the protective order. As for the custody/visitation order, we shall, pursuant to Md. Rule 8-604(d), neither affirm or reverse

the order, but remand the case for further consideration of the issue of which parent shall have custody of the children and the right of visitation for the non-custodial parent.

**JUDGMENT OF THE CIRCUIT COURT
FOR PRINCE GEORGE'S COUNTY AS TO
THE PROTECTIVE ORDER VACATED;
J U D G M E N T A S T O T H E
C U S T O D Y / V I S I T A T I O N O R D E R , N E I T H E R
A F F I R M E D O R R E V E R S E D ; C A S E
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