

Circuit Court for Harford County
Case No. C-12-FM-21-807037

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 0037

September Term, 2021

J.W.

v.

J.P.

Kehoe,
Beachley,
Kenney, James A., III
(Senior Judge, Specially Assigned),

JJ.

Opinion by Kenney, J.

Filed: November 1, 2021

*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.

This appeal arises from a Final Protective Order (FPO) issued by the Circuit Court for Harford County against appellant J.W. (Stepfather), based on a petition alleging mental injury of his stepdaughter, S., filed by J.P., S.’s father (Father).¹ At the hearing for the FPO, the circuit court found that Stepfather committed mental abuse against S. and ordered Stepfather not to see, contact, or harass S. by telephone or any other means, to stay away from her residence and her school, and to surrender all firearms to local law enforcement.

Stepfather, who is self-represented on appeal, presents one question for our review, which we have reworded as follows: Was the denial of his motion for modification of the FPO legally correct?²

FACTUAL AND PROCEDURAL BACKGROUND

Father and S.’s mother (Mother) share “50/50 custody” of S. In December 2020, S. attempted suicide at Mother and Stepfather’s house. On January 5, 2021, Father sought a Temporary Protective Order (TPO) against Stepfather, claiming mental abuse of a minor. The TPO was granted and the Harford County Department of Social Services (DSS) was ordered to investigate. Based on the DSS investigator’s finding of Stepfather’s and

¹ Father has not participated in this appeal.

² In his brief, Stepfather stated his question presented as follows: “Was the family court’s denial of the appellant’s motion for modification of the protective order and ruling, legally correct when Family Law § 4-507(a)(1) provides a protective order may be modified or rescinded during the term of the protective order after: (i) giving notice to all affected persons eligible for relief and the respondent; and (ii) a hearing?” The motion was titled Motion to Rescind Final Protective Order; or in the Alternative, for a New Trial, to Receive New Evidence, to Alter or Amend Judgment, and for Reconsideration (Motion) and was submitted by counsel.

Mother’s willingness to cooperate with community resources and not make comments that S. found to be hurtful, the DSS report indicated no current safety concerns. DSS recommended that the family follow through with all mental health and clinical assessments and recommendations.

At the beginning of the FPO hearing, on January 12, 2021, the court asked Stepfather if he would consent to a protective order without a finding of abuse. He did not consent, and the hearing proceeded with testimony from Father, S., Stepfather, Mother, and Stepfather’s former wife. Other than the DSS report and some photographs, the case was essentially presented through the testimony of those witnesses. Rather than summarizing that testimony, we have included much of it and the circuit court’s oral findings in this opinion.

Father testified that S. told him that “continued harassment and name calling, fat shaming by her stepfather had worn her down to the point where she attempted suicide” by swallowing pills. He also explained that he had attempted to talk with Mother to figure out ways to address the problem without court intervention, but she told him that “[S.] needs thicker skin and that nothing has ever happened in their house.”

When S. testified, she was asked to describe her relationship with her Stepfather:

FATHER’S COUNSEL: How would you describe your relationship with your stepfather [in early December 2020]?

S.: Not the greatest. He made what he called jokes about how ugly or fat or – inaudible – a window licker, which basically means I’m stupid.

COURT: Okay, hold on. You need to slow down a little bit, okay. I'm trying to get everything that you're saying. So why don't you start with, you said he made jokes?

* * *

S.: He would make what he called jokes about how I'm ugly or fat or I should join the window lickers, which means I'm stupid.

As to the effect that his "jokes" had on her, S. stated that they "drove [her] to the point of [a] suicide attempt:"

FATHER'S COUNSEL: Okay. And when were these comments made to you?

S.: He's been making them for a while. But one really bad night was some time in November, and he just kept going, going, going during dinner one night.

FATHER'S COUNSEL: Okay. And what was your response to those comments?

S.: I asked him to stop, and then I got told – inaudible – had such an attitude, that they were only jokes.

FATHER'S COUNSEL: Okay. And you mentioned that [Stepfather] has made comments about your weight and your intelligence. Have there been any other comments that [Stepfather] had made to you that made you feel uncomfortable?

S.: Well, one time maybe a couple – inaudible – when I loaded the dishwasher wrong October-ish, and he told me, "you do this one more time and you're out," which I interpreted as you load the dishwasher wrong one more time, I'm going to kick you out.

When questioned about a change in her relationship with Stepfather, S. testified:

S.: It's changed. Before the summer of 2020 we were very close. But after I cut my hair, then it started going bad.

FATHER'S COUNSEL: Why do you think cutting your hair would have caused a change in your relationship?

S.: Because it showed more of my sexuality and how I think of myself, and he's – inaudible – Christian and I don't think he likes that so much.

FATHER'S COUNSEL: And why do you think that?

S.: Because I overheard him arguing with my mother, called me a fag with multiple personalities.

FATHER'S COUNSEL: When did that conversation take place?

S.: That was on the 30th of December.

FATHER'S COUNSEL: And were you present for that?

S.: I was upstairs in my room. And I could hear it real clearly because I don't have a door.

* * *

FATHER'S COUNSEL: Okay. At this time, would you want to spend time with [Stepfather]?

S.: No, because I feel like he's going to be very angry at me. And that scares me, because he's angry, he's – inaudible – and yells a lot when he's angry.

* * *

FATHER'S COUNSEL: Have there been any – what would you describe as the impact on you from [Stepfather's] comments to you?

S.: They really hurt. And they drove my self-esteem so low. They made me feel very suicidal to the point where I actually attempted to commit suicide.

During cross-examination by Stepfather's counsel, S. explained that she had been seeing a therapist prior to her suicide attempt, was in a treatment facility for two weeks after the attempt, and was then in a virtual outpatient program. Stepfather's counsel then explored her relationship with Stepfather:

STEPFATHER'S COUNSEL: And I believe you said in your testimony that the problem started with [Stepfather] around the summer of 2020 when you cut your hair.

S.: Yes.

STEPFATHER’S COUNSEL: Prior to that, you had a good relationship with him?

* * *

S.: Yes.

* * *

STEPFATHER’S COUNSEL: Okay. So then after that, you cut your hair and there was, you testified about some comments that he was making that really hurt your self-esteem I think you said.

S.: Yes.

STEPFATHER’S COUNSEL: And at this point in, I guess, January of 2021, do you think you could get back to that relationship you had with him prior to the summer of 2020?

S.: I really would like to, but I don’t think I can with how I identify my sexuality because he is against that with his religion.

The court then asked S.:

COURT: All right. So listen, I need some more information on the statement that you say that [Stepfather] said that led you to attempt suicide. Because I’ve just heard generalities, and I haven’t really heard any specifics. So, if you could give me some specifics I would appreciate it.

S.: Well, he would comment on how the fact that I like to make crowns out of – inaudible – to put on my head because it makes me happy, how that’s so stupid, why would you do that. Or, nobody cares. You’re weird. Why did you make it that color? You’re so ugly. And, you’re singing so bad, just stop. My ears are bleeding.

S. then explained that she took 15 to 20 pills at Mother’s house on December 12 after returning from her Stepfather’s mother’s house.

COURT: And what was it that led you to do that? What caused you to do that?

S.: It was a mix between all the stuff that [Stepfather] said building up, and then my brother telling me to go kill myself.

COURT: Okay. So your brother told you to go kill yourself?

S.: Yes.

COURT: Okay. What happened right before that? What was going on when he said that to you?

S.: I made a joke about something I don't remember, and he said, you're not funny. Go kill yourself.

COURT: Okay. Who all was present when he said that to you?

S.: There was a couple people because we were at a cookie party for my grandmother, but we were, like, a bit way from anybody, so I don't think they overheard. We were talking low.

* * *

COURT: What was going on through your head?

S.: The fact that he was right, and if I was gone then I wouldn't have to hear [Stepfather's] jokes anymore, or I wouldn't bother anybody, my singing or stuff like that. And I went – inaudible –

COURT: I'm sorry. I didn't hear that.

S.: That's how I would do it, and then I decided on the medicine.

After denial of his motion for judgment as a matter of law, Stepfather testified. After establishing that Stepfather was a federal law enforcement officer, his counsel's effort to elicit more information about his employment was objected to by Father's counsel. In sustaining that objection, the court explained that the potential impact of the FPO on Stepfather's employment was "actually not relevant to the court."

Stepfather testified that his relationship with S. prior to the pandemic was fairly normal, and that all of the children³ would watch movies with him, and that they would swim together and go hiking. When questioned on comments S. testified Stepfather had made about her, he testified:

STEPFATHER’S COUNSEL: Do you or have you at any point in time referred to her as fat or overweight?

STEPFATHER: No, sir.

STEPFATHER’S COUNSEL: Have you been critical of her for having short hair?

STEPFATHER: No, sir.

STEPFATHER’S COUNSEL: [S.] also testified that you call her a window licker. Are you familiar with that term?

STEPFATHER: I’ve heard that term before but I’ve never referred to the kids as window lickers.

STEPFATHER’S COUNSEL: Have you referred to [S.] that way?

STEPFATHER: No, sir.

STEPFATHER’S COUNSEL: Have you ever called [S.] ugly?

STEPFATHER: No. She’s a beautiful young girl.

STEPFATHER’S COUNSEL: Have you ever called or referred or implied that she’s stupid or an idiot?

STEPFATHER: No. She’s probably smarter than I am.

* * *

³ Stepfather testified that he and Mother have two children together, two stepchildren, of which S. is one, and a child from a previous relationship.

STEPFATHER’S COUNSEL: [S.] also testified you were critical of her being gay. Have you made any statement to her about your opinion of her sexuality?

STEPFATHER: No, because we didn’t even know anything about it until the December 12th event.

STEPFATHER’S COUNSEL: Okay. Do you have a problem with her sexuality?

STEPFATHER: No, not at all.

STEPFATHER’S COUNSEL: Have you ever referred to [S.], whether it’s in her presence or outside of her presence, as a – the word F-A-G?

STEPFATHER: No, sir.

STEPFATHER’S COUNSEL: Is that a word you commonly use?

STEPFATHER: No, sir.

On cross-examination, Father’s counsel asked Stepfather if he thought S. was intelligent and honest, which Stepfather answered in the affirmative:

FATHER’S COUNSEL: So, if we can agree that she’s an honest child, an intelligent child, is there a reason that we would not believe her statements about you?

STEPFATHER: She’s been under the care of her father for the better part of two weeks. He’s made up multiple lies against me.

FATHER’S COUNSEL: So, it’s your contention this is all just about [Father]?

STEPFATHER: I believe this is about custody. This doesn’t have much to do with me.

After Stepfather denied making any comments about S.’s hair or sexuality or using any slurs to refer to S., Father’s counsel moved on to the DSS report:

FATHER’S COUNSEL: In the DSS report, the DSS investigator made note that there were several comments considered jokes that you would stop making, you agreed to stop making those, correct?

STEPFATHER: Correct.

FATHER’S COUNSEL: So what kind of jokes would you stop making if you haven’t been calling her faggot, if you haven’t been insulting her weight, if you haven’t been insulting her sexuality?

STEPFATHER: All the kids throw jokes from lines from movies because we watch a lot of movies together. So we would quote movie quotes to each other.

FATHER’S COUNSEL: So it’s your testimony that you are agreeing in this DSS report that your commitment to help your stepdaughter is you’re going to stop quoting movie lines to her?

STEPFATHER: Correct. If that’s what she needs, that’s what I’ll do.

FATHER’S COUNSEL: What kind of movie lines do you think you were saying that would have been harming her needs?

STEPFATHER: I don’t know which ones in specific that she’s referring to.

COUNSEL: You don’t know what specific comments you will stop making?

STEPFATHER: Well, I don’t – I will stop quoting movie quotes if that’s what helps her.

When the attorneys had no further questions, the court asked Stepfather:

COURT: Tell me some of the movie quotes that when you met with the Child Protective Services worker, you talked about that there were jokes and that you told me movie quotes, but I don’t know what they are. So, give me an idea of some of the movie quotes that you would throw around to [S.] that you considered to be jokes.

STEPFATHER: I mean, I don’t remember all of the movies, but I know one of the boys’ favorite movies is Monty Python and the Holy Grail – inaudible – line, so there’s a lot of quotable things in there. We have actually, like, do – I know this isn’t a quote, but we would take the coconuts and –

COURT: I'm familiar with the movie so you can – but you told the CPS worker that they were jokes, the comments that you made were done jokingly, but I still don't know from you – let me find it in the report.

* * *

COURT: I need to know what specifically it is that you said or that you recall saying that you considered to be a joke.

STEPFATHER: Yes ma'am.

COURT: And you told me they were movie quotes, but I still don't know what they are.

STEPFATHER: Yes, ma'am. One of the quotes that I would use was, "she's a witch, let's burn her." And then the kids would do it back to me as well.

* * *

COURT: Any others you can think of?

STEPFATHER: No, ma'am, I can't think of any off the top of my head.

When Mother testified, she stated that she had not witnessed any interactions between S. and Stepfather that gave her concern, and that Stepfather never refers to S. in a derogatory fashion. Stepfather's counsel then asked:

COUNSEL: Does he criticize her sexuality?

MOTHER: No. None of us had any idea until after she attempted to commit suicide in December. And she still hadn't told anyone. We found out by looking through her social media, so –

COUNSEL: Does he critique her weight or appearance?

MOTHER: No.

COUNSEL: Since the December incident and [since] she's been in treatment and then she came home, has that changed? Has his behavior toward her changed in any way?

MOTHER: No. We're all a little, I guess, walking on eggshells because we don't want to – I don't know how to say that. She's obviously upset about something, and we want to make sure she's okay. So I think we all kind of feel like we need to be there, but we don't really know what to do.

Mother stated that S. had never raised any concerns to her about how Stepfather treated her. According to Mother, she had asked S. about how she was feeling just two weeks prior to the suicide attempt, and that S. did not express any concerns about Stepfather or indicate that she was not doing well. On cross-examination, Father's counsel asked:

FATHER'S COUNSEL: And how would you describe your daughter's sexuality today?

MOTHER: From what I've read on her social media stuff was that she considers herself asexual, binary, bisexual, lesbian, and straight. So she's kind of across the gamut. She didn't – none of the sites that she was on or the people she was talking to she ever referred to herself as always the same.

The court asked Mother if she truly believed that her son was joking when he told S. to go kill herself. Mother explained that she hoped he wasn't being serious when he said that, and that the two of them "have never been nasty toward each other." The court then focused its questions on Stepfather and S.'s relationship.

COURT: All right. So my question is this. I'm not concerned with her brother. I'm concerned with [Stepfather]. What types of jokes and movie quotes have you heard him say to [S.]?

MOTHER: Specifically, "she's a witch, let's burn her." But it's not directed at [S.]. It's been directed at me. It's been directed at [other children] . . . It's come from [S.]. There are days when she's the one that brings it up.

COURT: Any other movie quotes that – or any other types of joking bantered that you have heard your husband, [Stepfather], direct toward [S.]?

MOTHER: No.

COURT: No?

MOTHER: The only one that I can think of –

COURT: That’s the only one about she’s a witch, let’s burn her?

MOTHER: Yes, ma’am.

On recross-examination, Father’s counsel asked Mother about the December 30th incident. After she acknowledged that she was arguing with Stepfather that night, Counsel asked a series of questions:

FATHER’S COUNSEL: Did your husband refer to [S.] as a liar or as a faggot?

MOTHER: No.

FATHER’S COUNSEL: Did your husband impugn your daughter’s mental health in that conversation?

MOTHER: We did discuss the fact that she was saying she was bisexual, asexual, binary, but none of the mental health stuff.

FATHER’S COUNSEL: Okay. To your knowledge, did your daughter hear that conversation?

MOTHER: No. She did not say anything about it to me at all.

The court asked Mother a few follow up questions about what Stepfather said during the conversation on December 30th about their recent discovery of S.’s sexuality.

MOTHER: That he didn’t care. I don’t care what she is. I don’t care if she’s – and he went down the list of different sexual orientations.

COURT: What exactly did he say when he went down the list?

MOTHER: Asexual, binary, gay, lesbian.

The final witness was Stepfather’s former wife. She stated that she had never seen Stepfather act in an abusive or derogatory manner towards any child and that she has no concerns about her child spending time with him.

When the testimony ended, the court stated:

COURT: So really the findings of fact that I make are that [Stepfather] – I believe what [S.] told me, that [Stepfather] made these comments to her.⁴ I believe that she was the subject of these comments. And I believe that it was an ongoing type of situation. And really the reason for that is that her brother felt comfortable enough in a family setting to tell her to go kill herself.

That means that he felt emboldened and empowered. And the reason that the court attributes and the reason that I find that he felt that emboldened to tell her to go kill herself was because that was the culture. That was the – that’s what goes on in this house. And I don’t believe for a second that it was joking.

And I’m mindful of bullying. I’m mindful of the fact that we have a problem in society right now with teenagers bullying each other [and] with teenagers being bullied. And that is exactly what I am hearing. That [Stepfather] may consider it to be a joke and may consider it to be joking, that [Mother] may consider it to be joking, but [S.] does not consider it to be joking. And many, many times we read in news reports about teenagers who have killed themselves.

Now if this were simply that, the situation was [S.] being bullied, that would be one thing. But [S.] attempted suicide. She took – she tried to overdose on her pills, and that’s how desperate this child was. That’s how hurt and how harmed she was by what [Stepfather] characterizes as joking, but which the court characterizes as bullying.

So I’m going to the Family Law Article to decide whether it meets the definition contained in the Family Law Article under child abuse and neglect.

Clearly he falls under the category of persons to whom the petition applies, because he is a household member, a family member related by marriage to the child. And this is a situation where there’s no evidence of physical abuse, but there is proffered evidence of mental injury.

⁴ The “comments” included “fat,” “ugly,” “stupid,” “a window licker,” and S. had overheard Stepfather call her a “fag with multiple personalities.”

Mental injury of a child under circumstances that indicate that child's health or welfare is harmed or at substantial risk of being harmed. And that is really substantiated by the fact that [S.] attempted suicide.

So I go to the definition of what is a mental injury. And it's in subsection R of the definition section, mental injury means the observable, identifiable, and substantial impairment of a child's mental or psychological ability to function. And I find that there was an impairment, a substantial impairment to [S.'s] ability to function that caused her to attempt suicide. That the suicide attempt was caused by the actions of [Stepfather].

Now the definition further reads that it has to be caused by an intentional act or series of acts. And the important part is regardless of whether there was an intent to harm the child.

Bullying is exactly what happened to this child. And they may try to characterize it as jokes, or movie quotes. The fact that both [Stepfather] and [Mother] gave the same example from a movie leads the court to conclude that perhaps they, not perhaps, leads the court to conclude that they discussed their testimony with each other before testifying. Because otherwise, if there were a lot of movie quotes that are being tossed around, done in a joking manner as [Stepfather] wants the court to believe, there would be more than that one example. And that's why I pressed him on that. That's why I asked him that. Because I want to know what movies, what jokes. He came up with one. His wife separately came up with the same one, which leads the court to conclude and really cast doubt on their credibility.

It's not relevant to the court whether he is – how he acts with other children because other children are not the victims here. The victim is [S.]. [S.] was driven to attempt suicide. Certainly her mental health is of serious concern to the court, and the fact that again, that it was caused by bullying, which the court finds was propounded by [Stepfather] as she testified, leads the court to make the finding that I do find by a preponderance of the evidence that [Stepfather] committed an act of abuse against [S.] that was statutory abuse of a child, mental abuse of a child, and that this took place continuously throughout the summer and fall of 2020, and, therefore, I will grant the request for a protective order.

The FPO was issued on January 12, 2021. On January 22, 2021, Stepfather filed the Motion. The Motion was denied on February 9, 2021, and Stepfather appealed on March 9, 2021.

Discussion

Standard of Review

We ordinarily review the denial of revisory motions under an abuse of discretion standard. *Wilson-X v. Dep't of Human Resources*, 403 Md. 667, 674-75 (2008); *Furda v. State*, 193 Md. App. 371, 404. (2010). “The relevance of an asserted legal error, of substantive law, procedural requirements, or fact-finding unsupported by substantial evidence, lies in whether there has been [an abuse of discretion].” *Wilson-X*, 403 Md. at 676. In our review, we “accept the facts as found by the hearing court unless it is shown that its findings are clearly erroneous.” *Piper v. Layman*, 125 Md. App. 745, 754 (1999). Credibility determinations are left to the trial court, because it has “the opportunity to gauge and observe the witnesses’ behavior and testimony.” *Ricker v. Ricker*, 114 Md. App. 583, 592 (1997).

Contentions

Stepfather contends that both the court’s grant of the FPO and the denial of the Motion were not legally correct. His contentions are premised on the court not observing the parties in their home like the DSS investigator did; the insufficiency of a two-hour Zoom hearing to “get to the core of what is causing [S.] to self-harm;” and the failure of the evidence to support a finding of “mental injury” and that his behavior was “objectively bad.” He argues that the court’s judgment was “largely based on the testimony from fourteen-year-old S., who was in the throes of a mental and family crisis, and that the DSS

investigation, which was conducted in the parties’ home with in-person interviews, “had it right” in determining that there were “no current safety concerns.”

Analysis

Stepfather framed the issue on appeal as the denial of a motion for reconsideration, but the Motion itself requested several alternate forms of relief. A quick timeline shapes our review on appeal. The FPO order was issued on January 12, 2021. On January 22, 2021, ten days after the entry of the order, Stepfather, through counsel, filed the Motion, which was denied on February 9, 2021. The notice of appeal was filed on March 9, 2021. Because the Motion was filed within ten days of the entered FPO, the thirty-day clock for filing an appeal challenging the underlying decision was tolled. Md. Rule 8-202. The filing of the notice of appeal within thirty days of the denial of the Motion brings the underlying judgment before us for review.

Stepfather mounts a three-pronged attack on the FPO. We will address each.

1. The Zoom Hearing and the Court not Observing the Family in Their Home

The Zoom hearing was held pursuant to the Administrative Order Expanding Statewide Judiciary Restricted Operations Due to the COVID-19 Emergency.⁵ Md. Code Ann. Fam.

⁵ Section (c) of that order states that “[c]ourts further are authorized to conduct remote proceedings using communication platforms, consistent with the Administrative Order on the Implementation of Remote Electronic Participation in Judicial Proceedings filed June 18, 2018, and the Administrative Order on Remote Hearings Held During the COVID-19 Emergency filed March 20, 2020. To the extent that the Administrative Order on the Implementation of Remote Electronic Participation in Judicial Proceedings filed June 18, 2018, requires the approval of the State Court Administrator for communications

Law § 4-506 lays out the procedure for TPO and FPO hearings and the scope of any potential order. Stepfather argues that the court made its findings and reached its conclusion during a two-hour Zoom hearing without visiting the family. He supports his argument that “DSS had it right” with the DSS report, which indicated that Father, Stepfather, Mother, and S. were interviewed in person by the DSS investigator who concluded that there were “no current safety concerns at this time.”

This case rose or fell on the credibility of those who testified. The DSS investigator’s determination that Stepfather and Mother were willing to stop making hurtful comments and would follow through with all mental health assessments and recommendations necessarily rested on an implicit finding of their credibility. Such interviews, however, are not ordinarily subject to the formalities of a court hearing or to cross-examination. The court saw and heard the parties in the context of child abuse and a protective order hearing and, finding that Stepfather and Mother were not credible, it concluded that S.’s safety was at risk. In short, we are not persuaded that the court not seeing the family in the home and reaching its decision after a two-hour Zoom hearing was an abuse of discretion or rendered the court’s conclusions legally incorrect.

2. *Finding of “Mental Injury”*

For issuance of an FPO, a petitioner must prove “by a preponderance of the evidence that the alleged abuse has occurred.” Md. Code Ann. Fam. Law § 4-506(c)(1)(ii). Abuse

platforms being utilized for remote proceedings, that requirement is waived during the COVID-19 emergency.”

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 a substantial risk of being harmed by: . . . a household member or family member.” Md. Code Ann. Fam. Law § 5-701(b)(1)(2). A “mental injury” is further defined as “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. Law § 5-701(r). The circuit court found that S.’s ability to function had been substantially impaired by what it characterized as “bullying under circumstances that indicate that S.’s health or welfare is harmed or at substantial risk of being harmed.” The court further stated that the harm or risk of harm was “really substantiated” by S.’s suicide attempt which it found was “caused by the actions of [Stepfather].” The court found, “by a preponderance of the evidence,” that Stepfather committed an act of abuse against S. In reaching its conclusion, the court found S. to be credible and that Mother and Stepfather were not.

In sum, the court found an “observable, identifiable, and substantial impairment” of S.’s mental ability to function caused by Stepfather’s actions. And, even if Stepfather did not intend to harm S. and his comments would not necessarily have harmed someone else, that does not mean his behavior was not “objectively bad” when it came to S. The court’s factual findings are not clearly erroneous and we perceive no error in its application of the law.

3. *Denial of the Motion*

Stepfather’s Motion sought multiple forms of relief, including rescinding the FPO, or “in the alternative, grant a new trial, receive new evidence, alter or amend the judgment, and for reconsideration of the FPO.” Family Law Article § 4-507(a)(1)(i-ii) states that “a protective order may be modified during the term of the protective order after: (i) giving notice to all affected persons eligible for relief and the respondent; and (ii) a hearing. Rule 2-534 provides:

In an action decided by the court, on motion of any party filed within ten days after entry of judgment, the court may open the judgment to receive additional evidence, may amend its findings or its statement of reasons for the decision, may set forth additional findings or reasons, may enter new findings or new reasons, may amend the judgment, or may enter a new judgment.

And Rule 2-535(c), in regard to newly discovered evidence, provides:

On motion of any party filed within 30 days after entry of judgment, the court may grant a new trial on the ground of newly-discovered evidence that could not have been discovered by due diligence in time to move for a new trial pursuant to Rule 2-533.

Rule 2-534, Rule 2-535(c) and Family Law § 4-507(a)(1) are all written in terms of “may” and would permit a court, in the exercise of its discretion, to modify or rescind the FPO. But they do not require the court to do so.

Here, the entry of the FPO centered on the court’s finding that Stepfather made denigrating comments complained of by S. “continuously throughout the summer and fall of 2020.” The court concluded that S.’s suicide attempt “was caused by the actions of

[Stepfather].” The new evidence proffered in the Motion included: S.’s suicide note, which made “no mention” of Stepfather; S.’s continuing to self-harm and sending inappropriate pictures of herself online; S.’s indication in certain, unspecified electronic communications that she was happy at Stepfather and Mother’s house; Stepfather being placed on administrative light duty because of the case and his inability to carry a firearm pending a further investigation; and that the FPO limited Mother’s contact with S.

We are not persuaded that the proffered “new” evidence related to S. would render the circuit court’s initial determination clearly erroneous or incorrect as a matter of law or that its decision not to rescind or modify the FPO was an abuse of discretion. And we recognize that protecting S. in this instance may have adverse effects on Stepfather’s employment and on Mother’s ability to see her. But that does not make the issuance of the FPO and the decision to leave it in place legally wrong or an abuse of discretion. In *Katsenelenbogen v. Katsenelenbogen*, 365 Md. 122, 137 (2001), the Court of Appeals stated:

A judicial finding, made after a full and fair evidentiary hearing, that one party had committed an act of abuse against another is entitled to consideration in determining issues to which that fact may be relevant. Living arrangements established as the result of a protective order may have relevance in determining custody, use and possession, and support in subsequent litigation. That is *not* the concern of the court in fashioning appropriate relief in a domestic violence case, however. The concern there is to do what is reasonably necessary—no more and no less—to assure the safety and well-being of those entitled to relief.

The impact on Stepfather’s employment is not relevant to the FPO determination. And, as to the factors of Family Law Article 4-506(h),⁶ which Stepfather contends were not considered, but he was not expressly ordered to vacate the home,⁷ nor does it appear that the housing needs of the other minor children and Mother were affected. To be sure, Mother’s time with S. may be affected, because he is not to be around at that time, but, as noted above, whatever relevance “living arrangements” may have in other contexts, the concern in issuing necessary and reasonably appropriate relief in this case is the safety and wellbeing of S. The decision of what relief was appropriate to protect S. was within the discretion of the circuit court. We perceive no abuse of that discretion in the denial of Stepfather’s Motion.

⁶ The statute states: “In determining whether to order the respondent to vacate the home under § 4-505(a)(2)(iv) of this subtitle or subsection (d)(4) of this section, the judge shall consider the following factors: (1) the housing needs of any minor children living in the home; (2) the duration of the relationship between the respondent and any person eligible for relief; (3) title to the home; (4) pendency and type of criminal charges against the respondent; (5) the history and severity of abuse in the relationship between the respondent and any person eligible for relief; (6) the existence of alternative housing for the respondent and any person eligible for relief; and (7) the financial resources of the respondent and the person eligible for relief.

⁷ When talking about the effect of the order on the family’s living arrangements and Mother’s ability to see S., the court stated: “I am checking the box that says he shall not contact [S.]. He is to have no contact with her. And how that impacts the custody situation, I don’t know that it necessarily does since the custody is between the father and the mother, and he’s neither of those two. And certain arrangements can be made to allow there to be parenting time with the mother as long as he’s not around.” Stepfather’s counsel then asked: “I’m just wondering how – I don’t understand what he’s gonna do. Where is he gonna go when his daughter wants to see her mother?” In which the court responded: “That is up to them to figure out. All right.”

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

The correction notice(s) for this opinion(s) can be found here:

<https://mdcourts.gov/sites/default/files/import/appellate/correctionnotices/cosa/unreported/0037s21cn.pdf>