

Circuit Court for Anne Arundel County
Case No. C-02-FM-24-807342

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 143

September Term, 2024

PHILIP CLARKE

v.

CHINYERE GIBSON

Berger,
Albright,
Kenney, James A., III
(Senior Judge, Specially Assigned),

JJ.

Opinion by Berger, J.

Filed: March 20, 2026

* 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 case concerns the issuance of a final protective order by the Circuit Court for Anne Arundel County against appellant, Philip Clark (“Mr. Clarke”), and in favor of appellee, Chinyere Gibson (“Ms. Gibson”) on behalf of the parties shared children, A.C. and O.C. Ms. Gibson alleged that A.C. and O.C. informed her that they had been physically and mentally abused by Mr. Clarke and were afraid of him. Ms. Gibson was granted a final protective order on behalf of A.C. and O.C. and was also granted physical custody of the children. Mr. Clarke alleged four errors on appeal, including that the circuit court erred in granting the final protective order because there was insufficient evidence to support a finding of abuse. This Court affirmed. Mr. Clarke then filed a petition for certiorari with the Supreme Court of Maryland, which was granted. The Supreme Court affirmed in part and vacated in part, and remanded to this Court to consider whether sufficient evidence was presented to support the final protective order.

QUESTIONS PRESENTED

On remand, we consider the following question:¹

Whether the circuit court erred in finding by a preponderance of the evidence that Mr. Clarke had abused O.C.

For the following reasons, we hold that the record before the circuit court does not contain sufficient evidence to sustain the final protective order. We, therefore, reverse the finding of abuse against Mr. Clarke and vacate the grant of the final protective order.

¹ Mr. Clarke had phrased the question as follows in his initial appeal:

Did the trial court err in finding abuse when there was insufficient evidence in the record?

BACKGROUND²

The alleged abuse

Ms. Gibson and Mr. Clarke share two children, A.C., born in 2012, and O.C., born in 2014. At the time of the events leading to the issues below, Mr. Clarke had primary physical custody and sole legal custody of A.C. and O.C., and Ms. Gibson was granted visitation every other weekend.

On February 7, 2024, Ms. Gibson filed a Petition for Protection from Child Abuse on behalf of A.C. and O.C. A Protection Order hearing was held the same day. During the hearing, Ms. Gibson testified that A.C. informed her that A.C. was afraid of Mr. Clarke, and that Mr. Clarke had engaged in physical violence towards A.C. and O.C. Specifically, Ms. Gibson testified that A.C. told her that on January 31, 2024, Mr. Clarke “threatened to throw [O.C.] through the wall[,]” and “actually punched [O.C.] in the chest[.]” Ms. Gibson further testified that A.C. informed her that Mr. Clarke “threatened to punch [A.C.], but instead of punching her[,] he punched her headboard[,]” “past her ear where her head was[,]” and “punched a hole in her wall in her room.” Based on this evidence, the circuit court found reasonable grounds that Mr. Clarke committed abuse of A.C. and O.C. and granted Ms. Gibson’s request for a temporary protective order.

The case was referred to the Anne Arundel County Department of Social Services (“DSS”). A DSS worker, Donyell Brodie, interviewed A.C. and O.C. on February 8 and

² We have included facts pertinent to the specific issue remanded to us by the Supreme Court. For additional facts related to issues not presently before this court, see *Clarke v. Gibson*, No. 143, 2024 WL 4490368 (Md. App. Ct. Oct. 15, 2024) (hereinafter “*Clarke I*”) and *Clarke v. Gibson*, 492 Md. 557 (2025).

12, 2024, and prepared a report. According to the report, both A.C. and O.C. expressed being fearful around Mr. Clarke. O.C. informed Ms. Brodie that “she was scared because [Mr. Clarke] mentally abuses them. He mentally abuses them by threatening if you don’t do this, then will throw you into the wall or punch a hole in the wall. [Mr. Clarke] has reportedly punched a hole in [A.C. and O.C.’s] bedroom wall and punched [A.C.’s] headboard when he missed punching her.”

A.C. also relayed to Ms. Brodie that Mr. Clarke had “tried to punch [A.C.] last Wednesday [January 31, 2024] with his fist but missed and hit her headboard.” A.C. corroborated that Mr. Clarke punched a hole in the bedroom wall, and stated that he “threatened to punch [O.C.] in the chest last Thursday [February 1, 2024].” A.C. also told Ms. Brodie that on February 1, 2024, Ms. Gibson called A.C. and “was concerned about [O.C.] crying and sounding as if she couldn’t breathe” in the background. Additionally, A.C. told Ms. Brodie that on Thanksgiving Day 2023, Mr. Clarke allegedly punched O.C. in the chest because he did not think O.C. was listening to him. The report was submitted to the court on February 23, 2024, the same day as the final protective order hearing.

The final protective order hearing

On February 23, 2024, both Mr. Clarke and Ms. Gibson were permitted to review the report prior to the hearing. Ms. Gibson called Ms. Brodie as a witness, and began her questioning by asking a long unclear question, most of which was reading from the DSS report. Mr. Clarke objected to the question which the circuit court sustained. Essentially no testimony was admitted during the examination of Ms. Brodie, and the DSS report was not admitted into evidence.

Ms. Gibson then called her sister, Princess Nadia Agbeko. Ms. Agbeko testified that she was present on February 4, 2024 when A.C. and O.C. were returned to Mr. Clarke’s care. Ms. Agbeko testified that A.C. was frowning and that O.C. appeared scared.

Ms. Gibson then testified that on January 31, 2024, she attempted to call A.C. and O.C. for their scheduled phone call, and when she did, she could hear O.C. crying in the background of the call. Ms. Gibson then testified that she exchanged text messages with Mr. Clarke, in which she accused him of “emotionally abusing the children,” and Mr. Clarke responded with a text message of “laughing emojis.” Ms. Gibson continued, testifying that she received a text message from A.C. the morning of Friday, February 2, 2024. The circuit court sustained Mr. Clarke’s objection when Ms. Gibson attempted to describe the contents of the message. Ms. Gibson then testified that A.C. gave her a letter when she picked the children up from Mr. Clarke. The letter outlined “what had happened between January 31st and February 2nd of the incident of Philip Clarke being frustrated with the children.” The court also sustained Mr. Clarke’s subsequent objection to the contents of the letter. Ms. Gibson then attempted to read portions of the DSS report, prompting the following:

[COUNSEL FOR MR. CLARKE]: Objection, Your Honor.
And she’s reading from the worker’s report --

THE COURT: Mm-hmm.

[COUNSEL FOR MR. CLARKE]: -- which is not in evidence.

THE COURT: Mm-hmm.

[COUNSEL FOR MR. CLARKE]: She wasn’t present, so I don’t see how she can testify to any of it.

THE COURT: Okay. All right, so the worker's report had only been marked for identification purposes --

[MS. GIBSON]: Okay.

THE COURT: -- only at this point. It's not in evidence at this point.

[MS. GIBSON]: Okay.

THE COURT: Is it something that you are asking for the Court to have in evidence?

[MS. GIBSON]: Yes.

THE COURT: Okay.

[COUNSEL FOR MR. CLARKE]: Your Honor, if that's the case, I wouldn't have let the worker go. She did not move with her here to have that put into evidence. I think it's too late for that.

THE COURT: All right, go ahead and testify.

No further comments regarding the report were made, indicating that Mr. Clarke's objection was sustained. After Ms. Gibson finished testifying, the text messages between Ms. Gibson and A.C. were admitted into evidence. Text messages between Ms. Gibson and Mr. Clarke from two separate dates were also admitted into evidence: messages from November 28, 2023, in which Mr. Clarke denied physically abusing A.C. and O.C., and the message from January 31, 2024, in which Ms. Gibson accused Mr. Clarke of "mentally and emotionally abusing" A.C. and O.C. and he responded with "laughing emojis"

Mr. Clarke and his then-fiancée testified on Mr. Clarke's behalf. Mr. Clarke denied physically or mentally abusing the children, although he admitted he had spanked O.C. in

the past. His fiancée testified that she never heard or saw Mr. Clarke threaten to abuse, physically assault, or punch either of the children. Neither A.C. nor O.C. testified at the final protective order hearing.

The circuit court then made the following factual finding:

All right, so I've had an opportunity to consider the evidence and also, which was highly significant for my determination, the credibility of witnesses.

* * *

[T]he Court, after consideration of all of the evidence, the credibility of witnesses, finds that there is preponderance of the evidence to believe that the respondent committed the following acts of abuse. Assault in any degree and statutory abuse of a child physical, specifically punching O.C. in the chest.

The evidence was -- persuaded this Court. I know that there was testimony to the contrary as far as the respondent stating that -- denying that he hurt her in any way, but I just did not find his testimony credible at all. Particularly given when his fiancé[e]'s testimony seemed to contradict his testimony and his attempt to minimize the physical touching. So, I did not find his testimony credible at all.

The court issued a final protective order against Mr. Clarke, and granted custody of A.C. and O.C. to Ms. Gibson, with Mr. Clarke to have supervised visitation. The order specified that Mr. Clarke committed physical abuse of a child by punching O.C. in the chest.

Mr. Clarke's appeal

On appeal to this Court, Mr. Clarke argued, among other things, that the circuit court erred when it found by a preponderance of evidence that he had committed physical abuse of O.C. Mr. Clarke alleged that the only evidence that he punched O.C. had been stricken

as hearsay, and there was no admissible evidence to support the abuse finding. Ms. Gibson did not file a brief. We agreed that the testimony had been stricken as hearsay. Nevertheless, we held that the circuit court’s disbelief of Mr. Clarke’s testimony was sufficient:

The court based its finding of physical abuse of O.C. on Mr. Clarke’s own testimony which was contradicted by [his fiancée’s] testimony. The court explicitly stated that its finding was predicated on the fact that it did not find Mr. Clarke to be credible. As noted, we defer to the trial court’s credibility determinations because the court has had the opportunity to observe and assess witness behavior during proceedings. It is not our role, as an appellate court, to second-guess the trial judge’s assessment of a witness’s credibility. Notably, the trial court did not find Mr. Clarke’s explanation of events to be credible, and discounted his testimony that he never punched, threatened violence against, or mentally abused A.C. or O.C. As a result, based on the trial court’s credibility determinations, there is sufficient evidence in the record to support the trial court’s finding, by a preponderance of the evidence, that Mr. Clarke had committed physical abuse against A.C. or O.C.

Clarke I, 2024 WL 4490368 at *20 (internal citations omitted). Therefore, we affirmed the circuit court’s finding that there was sufficient evidence to sustain the finding of abuse against Mr. Clarke.

The Supreme Court of Maryland

Mr. Clarke sought review by the Supreme Court, which granted his petition for a writ of certiorari. Ms. Gibson again did not file a brief with the Supreme Court, and amicus curiae was appointed on her behalf.³ The Supreme Court vacated this Court’s opinion that

³ The issue of the sufficiency of the evidence was fully briefed by both parties at the Supreme Court. Accordingly, on remand, we consider the arguments raised in the parties’ briefs to this Court and the Supreme Court, and do not require additional briefing.

the circuit court’s credibility determination was sufficient, and emphasized the necessity of affirmative evidence. *Clarke*, 492 Md. at 588-89. The Supreme Court then “remanded the matter back to [the Appellate Court] with instructions to evaluate the entire record before the circuit court to determine whether it supports the circuit court’s judgment. On remand, the Appellate Court should revisit the issue of the sufficiency of the evidence, including the admissibility of the testimony of witnesses, in light of new arguments raised by the amicus party.” *Id.* at 589.

Accordingly, we now consider whether the circuit court was presented with sufficient evidence to sustain a finding of physical abuse by Mr. Clarke and the grant of the protective order.

STANDARD OF REVIEW

“When reviewing the issuance of a final protective order, we accept the circuit court’s findings of facts, unless they are clearly erroneous.” *C.M. v. J.M.*, 258 Md. App. 40, 58 (2023). 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). Substantial evidence is any “such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.” *Bulluck v. Pelham Wood Apartments*, 283 Md. 505, 512 (1978).

We consider the evidence produced at trial in the light most favorable to the prevailing party. *Mills v. Mills*, 178 Md. App. 728, 734–35 (2008). “As to the ultimate conclusion, however, we must make our own independent appraisal by reviewing the law and applying it to the facts of the case.” *Piper v. Layman*, 125 Md. App. 745, 754 (1999).

DISCUSSION

In his brief to the Supreme Court, Mr. Clarke contended that the circuit court erred because there was insufficient evidence presented to establish by a preponderance of the evidence that he punched O.C. Mr. Clarke alleged that the only evidence considered by the circuit court was the lack of credibility of Mr. Clarke and his fiancée inasmuch as Ms. Gibson’s testimony regarding what A.C. and O.C. told her had been stricken. In his initial brief to this Court, Mr. Clarke argued that the only admissible evidence presented to the court was Ms. Agbeko’s observations of A.C. and O.C. being picked up on February 4, 2024 from Mr. Clarke’s home. Thus, Mr. Clarke contended, because the circuit court relied on his lack of credibility rather than affirmative evidence, the finding of abuse was in error.

Ms. Gibson did not submit a brief to this court. In the amicus curiae brief submitted to the Supreme Court on her behalf, amicus curiae argued that the circuit court’s finding was not based only on its disbelief of Mr. Clarke. Rather, amicus curiae alleged, the circuit court also relied on evidence of the Thanksgiving Day 2023 punch of O.C. which was detailed in the DSS report and mentioned by Ms. Gibson during her examination of Ms. Brodie. Amicus curiae argue that the court overruled Mr. Clarke’s objection as it pertained to the Thanksgiving Day punch of O.C., and thus the finding of abuse was predicated on that punch, as well as disbelieving Mr. Clarke’s testimony. Finally, amicus curiae argued that although the DSS report was not entered into evidence, this “does not nullify the operation of the hearsay exception^[4] to testimony about the contents of the report.”

⁴ The hearsay exceptions in Maryland Rule 5-803(b)(8)(A)(iv) permit: “a memorandum, report, record, statement, or data compilation made by a public agency

A final protective order may be granted by the circuit court if the court “finds by a preponderance of the evidence that the alleged abuse has occurred[.]” Maryland Code (1984, 2019 Repl. Vol.) §4-506(c)(1)(ii) of the Family Law Article (“FL”). FL §4-501(b) provides in pertinent part:

(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)(i) 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.

(ii) 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.

Abuse of a child includes “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 by . . . a parent.” FL § 5-701(b)(1)(i)(1).

As noted, we “make our own independent appraisal by reviewing the law and applying it to the facts of the case” to determine whether there was sufficient evidence

setting forth . . . in a final protective order hearing conducted pursuant to [FL] § 4-506, factual findings reported to a court pursuant to [FL] § 4-505, provided that the parties have had a fair opportunity to review the report.”

presented to the circuit court to grant a final protective order. *Piper*, 125 Md. App. at 754. At least some of this evidence, however, must be affirmative. *Clarke*, 492 Md. at 589 (“Negative credibility determinations—alone—are never enough to sustain a party’s burden of proof. *See VF Corp.*, 350 Md. at 711. Stated another way, a denial of a fact cannot constitute affirmative evidence of that fact.”). The Supreme Court has stated:

We have long recognized the general rule that if a trier of fact disbelieves part or all of a witness’s testimony, that discredited testimony is assigned no weight and plays no role in the consideration of the ultimate issue. In other words, disbelief is not evidence in and of itself. . . . The part(s) of the testimony disbelieved must be discredited by the fact-finder. *See VF Corp. v. Wrexham Aviation Corp.*, 350 Md. 693, 711 (1998) (“The jury’s prerogative not to believe certain testimony, however, does not constitute affirmative evidence of the contrary.”); *Attorney Grievance Comm’n v. Clements*, 319 Md. 289, 298 (1990) (“A refusal to believe evidence of a respondent, however, does not, of itself, supply affirmative evidence of the dishonesty, fraud, deceit or misrepresentation charged.”); *Carter v. State*, 10 Md. App. 50, 53 (1970) (“Generally, disbelieving evidence provides no basis for finding evidence to the contrary”); *Hayette v. State*, 199 Md. 140, 145 (1952) (“Ordinarily disbelieving evidence is not the same thing as finding evidence to the contrary.”).

Grimm v. State, 447 Md. 482, 506 (2016).

This Court has also held that there must be affirmative evidence in addition to the lack of credibility:

A party with the burden to prove an alleged fact may not merely call a hostile or adverse witness, elicit testimony from him to the effect that the alleged fact does not exist, discredit him, and then rely on the trier of fact to conclude, based on the witness’s lack of credibility, that the opposite of his statements must be true. . . . Facts cannot be established by not believing witnesses who deny them. . . . The finder of fact, therefore, is

not free to infer from rejected testimony that its converse is true. . . .

Roeder v. Auxier, 70 Md. App. 50, 55 (1987) (internal citations and quotations omitted).

Therefore, as directed by the Supreme Court, we must determine what affirmative evidence was presented to the circuit court to determine if the circuit court erred in its finding by a preponderance of the evidence that Mr. Clarke abused O.C. As noted, Ms. Gibson appeared pro se, and attempted to introduce evidence, through her own testimony and examination of Ms. Brodie, regarding what A.C. and O.C. told her about being harmed by Mr. Clarke. Although the circuit court gave Ms. Gibson some latitude when asking her questions, this testimony was ultimately stricken as hearsay.⁵ *Clarke I*, 2024 WL 4490368 at *18-19 (“Because the trial court did not admit and consider the hearsay testimony of Ms. Gibson, it therefore committed no error in its evidentiary ruling.”). Accordingly, this was not affirmative evidence considered by the court.

The only affirmative evidence that was admitted to the court was Ms. Agbeko’s testimony that when A.C. and O.C. were returned to Mr. Clarke’s care on February 4, 2024, she witnessed A.C. frowning and O.C. appearing scared, and Ms. Gibson’s testimony regarding the phone calls on January 31, 2024, in which she heard O.C. crying in the background. The text messages between Ms. Gibson and Mr. Clarke, where he denies

⁵ Amicus curiae argued on appeal to the Supreme Court that the circuit court actually admitted Ms. Gibson’s mention of the Thanksgiving Day punch of O.C. when she was examining the Ms. Brodie. We held otherwise, however, in *Clarke I*, 2024 WL 4490368 at *18 (“Although Mr. Clarke argues that it is unclear what the court decided regarding Mr. Clarke’s objection during Ms. Brodie’s testimony, we read this interaction, reminding Ms. Gibson that she could not testify, as disregarding Ms. Gibson’s lengthy question, thereby sustaining the objection.”). We will not revisit this holding here.

abusing the children, and between Ms. Gibson and A.C., where A.C. said she was scared of her father, were admitted as exhibits. The court, however, sustained Mr. Clarke’s objection when Ms. Gibson attempted to testify regarding what A.C. stated in the text messages.

The court erred in finding that this evidence was sufficient to grant the final protective order, even in conjunction with the court’s disbelief of Mr. Clarke’s testimony that he never hit A.C. and O.C. The circuit court was well within its discretion to disbelieve Mr. Clarke’s testimony, and we give great deference to that credibility finding. *Clarke*, 492 Md. at 588 (“Appellate courts generally ‘defer to the trial court’s judgment in weighing the evidence and judging the credibility of witnesses[.]’”) (quoting *Bausch & Lomb Inc. v. Utica Mut. Ins. Co.*, 355 Md. 566, 588 (1999)). As noted, however, the court’s “prerogative not to believe certain testimony . . . does not constitute affirmative evidence of the contrary.” *VF Corp.*, 350 Md. at 711. Thus, as noted by the Supreme Court, the circuit court’s disbelief of Mr. Clarke’s testimony that he did not abuse A.C. and O.C. did not establish affirmative evidence that he *did* abuse the children. *Clarke*, 492 Md. at 588. The circuit court was required, instead, to rely on the affirmative evidence presented to it -- Ms. Agbeko’s testimony that she observed the children looking upset and Ms. Gibson’s testimony that she heard O.C. crying in the background during the phone call.

To reiterate, “we must make our own independent appraisal by reviewing the law and applying it to the facts of the case.” *Piper*, 125 Md. App. at 754. The grant of a final protective order is appropriate when the circuit court finds that it is “more likely than not” that abuse occurred. *C.M.*, 258 Md. at 56-57 (citations omitted). Although A.C. and O.C.

appeared upset when faced with the prospect of returning to Mr. Clarke’s care, and Ms. Gibson heard O.C. crying in the background when she was on the phone with A.C., this alone is insufficient to sustain the finding of abuse by Mr. Clarke by a preponderance of the evidence. The court was not presented with affirmative evidence that physical abuse of either A.C. or O.C. occurred to sustain the court’s finding of abuse against Mr. Clarke, “specifically punching O.C. in the chest,” since the only testimony to that effect was stricken by the circuit court as hearsay. Instead, the circuit court based its ruling on the fact that it “just did not find [Mr. Clarke’s] testimony credible at all.” Of course, “a denial of a fact cannot constitute affirmative evidence of that fact.” *Clarke*, 492 Md. at 589. We are not persuaded that the affirmative evidence presented to the circuit court was sufficient to establish abuse pursuant to FL § 4-501(b) and warrant a protective order.

Accordingly, we reverse the circuit court’s finding that Mr. Clarke committed abuse against O.C., and vacate the final protective order granted in favor of Ms. Gibson on behalf of A.C. and O.C. against Mr. Clarke.

**JUDGMENT OF THE CIRCUIT COURT
FOR ANNE ARUNDEL COUNTY
REVERSED. COSTS TO BE PAID BY
APPELLEE.**