

Circuit Court for Montgomery County
Case Nos. C-15-FM-22-807757; C-15-FM-22-807771

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

Nos. 0387 & 0403
September Term, 2022

MIR SADAT
v.
LEEZA RAHIMI

Berger,
Friedman,
Harrell, Glenn T., Jr.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Friedman, J.

Filed: October 31, 2022

*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. R. 1-104.

In this case, we are asked to review the rulings of the Circuit Court for Montgomery County denying the petition for a protective order filed by Husband, Dr. Mir Sadat, and granting the petition filed by Wife, Dr. Leeza Rahimi. For the reasons that follow, we affirm the circuit court's orders.

FACTUAL BACKGROUND

Husband and Wife have an extensive history of marital conflict and allegations of assault against each other. The cross-petitions at issue here were filed following a specific confrontation on March 14, 2022, in the garage of their shared family home.

During the parties' divorce proceedings, they entered into a temporary custody agreement that was intended to establish their own version of a "nesting" arrangement. Under a conventional nesting arrangement, "a child remains in the marital home, and the parents move in and out of the home for their respective physical custody periods, thus affording the child the stability of 'nesting' in a permanent residence." Michael T. Flannery, *Is "Bird Nesting" in the Best Interest of Children?*, 57 SMU L. Rev. 295, 297 (2004). Husband and Wife's agreement, however, provided that both parties would continue to live in the same house full-time but stay in separate areas and follow a schedule as to when each of them was to have "custody" of their three daughters, ages 6, 8, and 12. The agreement took effect in January 2022, and Husband moved into the basement. Husband interpreted the arrangement to require that during one parent's designated time, the children were not to see or interact with the other parent. In an effort to enforce this, during his scheduled time with the children, Husband had them move out of their bedrooms

and into the basement with him. He also placed a lock on the door to prevent Wife from entering.¹

On March 14, 2022, Husband was returning home with the children at the same time that Wife was leaving. Husband parked in the driveway and opened the garage door. Wife was parked in the garage and was getting into her car as the door was opening. Wife began to back out into the driveway but stopped her car to talk to her daughters through the open car window. While Wife was stopped halfway in and halfway out of the garage, Husband pushed the button inside his vehicle to close the garage door, causing it to come down on Wife's car. After the garage door hit the car and then went back up, Wife got out of the car and there was a verbal and physical altercation between the parties. As a result of this incident, both parties filed petitions for a protective order against the other.

In his petition for a protective order, Husband alleged that after he accidentally hit the garage door button, Wife got out of her car, punched him three times in the stomach, verbally berated him in front of their daughters, and she then followed him into the house. In Wife's petition, she alleged that Husband intentionally closed the garage door on her car to scare her and their eldest daughter, who was standing next to the car at the time. Wife further alleged that when she got out of the car, Husband pushed her and threatened her and the children.

¹ As this was a voluntary agreement and as we are not required to interpret it, we make no comment on the reasonability of this nesting arrangement or Husband's interpretation thereof.

The circuit court held a hearing on the parties' cross-petitions over the course of two days, during which both parties testified. Husband testified that after he had parked in the driveway, the girls got out of the vehicle and went inside the house. He stated that when he went to retrieve the girls' belongings from the passenger side of the vehicle, he accidentally hit the garage door button instead of the button to open the passenger door. Husband's testimony described that Wife then "became very angry, exited her vehicle, and punched him in the stomach three times in front of their children, screamed at him, and then went to [the grocery store]."

Wife testified that she was about to leave the parties' home when Husband returned with their daughters and the girls came over to her car to say hello. She described that she did not get out of her car and was talking to them through the open car window when Husband closed the garage door on her car. Wife testified that she believed Husband was trying to injure or kill her, and that she feared for her safety. Wife further described that after she got out of the car, Husband got close to her and pushed her, and told her to get out of his way because it was his night with the girls and she couldn't talk to them.

In addition to testifying about the March 14 incident in the garage, each party also testified extensively about prior confrontations, both verbal and physical. They presented photographs of prior injuries and numerous videos that they had taken of each other and their children during arguments. Wife also presented evidence that she had filed a previous petition for a protective order in December 2021 but withdrew it under pressure.

At the conclusion of the hearing, the circuit court found that both parties had "engaged in physically and emotionally[]abusive behavior directed at the other," that both

parties had assaulted the other in the past, and that there was continuing abuse going both ways. The court also found that both parties “have been emotionally abusive to their three daughters.” Moreover, the court found Wife’s description of Husband’s behavior on March 14 to be consistent with his previous actions relative to the nesting agreement. With regard to Wife’s petition, the circuit court concluded:

[T]he remote control to open the garage is on the rear-view mirror. The button in the vehicle that opened the van doors [was] many inches away from the garage door opener, not on the rear-view mirror, and was part of the vehicle, and that the actions of [Husband] bringing down the garage door were intentional, and not an accident. [Husband] was angry that [Wife] was in the garage when he came home and that she was there and that the girls were talking to her on his time.

...[T]he Court finds that [Wife] proved by a preponderance of the evidence that she was assaulted by [Husband] and that [Husband] placed her in imminent fear of serious bodily harm when he closed the garage door on her on March 14, 2022, and pushed her out of the way and, therefore, I will issue a final protective order in favor of [Wife].

With regard to Husband’s petition, the court stated that it “didn’t believe all [of Husband’s] allegations of physical abuse by [Wife]” and noted that some of them seemed “improbable.” The court concluded:

I did see very disturbing video of [Wife] knocking a phone out of [Husband’s] hand, doing things in front of the children, [and] acting in an angry and aggressive way towards him.... I do credit his allegations of some physical abuse by [Wife] against him, including the photographs that he showed but those are older incidents. I do not find that [Husband] proved by a preponderance of the evidence [that Wife] punched him in the stomach three times on March 14, 2022, which is the basis for his petition and, therefore, I’m going to deny his petition for [a] protective order.

Husband now appeals the circuit court’s rulings.

DISCUSSION

I. RULINGS ON PROTECTIVE ORDERS

In his first two issues, Husband challenges the circuit court’s rulings denying his petition for protection but granting Wife’s petition for protection. First, he argues that the circuit court erred in denying his petition because his sequence of events was consistent with parts of Wife’s testimony, and thus it was “more likely that [his] description of the assault [was] more accurate” than Wife’s. He next argues that the court erred in granting Wife’s petition because no reasonable person would have feared for their safety under the circumstances. We are not persuaded by either argument.

We review the grant or denial of a protective order for an abuse of discretion. *Ricker v. Ricker*, 114 Md. App. 583, 592 (1997). A petitioner seeking a protective order must show “by a preponderance of the evidence that the alleged abuse has occurred.” MD. CODE, FAMILY LAW (“FL”) § 4-506(c)(1)(ii). For purposes of the domestic violence statute, an act of abuse is one that “causes serious bodily harm or places a person eligible for relief in fear of imminent serious bodily harm, battery, assault and battery, rape, sexual offense, or false imprisonment.” *Coburn v. Coburn*, 342 Md. 244, 253 (1996) (citing FL § 4-501(b)(1). “When conflicting evidence is presented, 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). “The determination of credibility is a matter left entirely to the trial judge

who has the opportunity to gauge and observe the witnesses' behavior and testimony during the trial." *Ricker v. Ricker*, 114 Md. App. 583, 592 (1997).

Husband's petition was based on his allegation that on March 14, after he had accidentally closed the garage door on her car, Wife got out and punched him in the stomach three times. In making its ruling, the circuit court made specific factual findings based on the testimony of both parties and the evidence presented. The court made it clear that it found only some of Husband's allegations of past abuse to be credible, and that it was not persuaded that his testimony about the March 14 incident in the garage was accurate. Based on its evaluation of Husband's credibility and his testimony, the court concluded that Husband had not proven the allegations made in his petition by a preponderance of the evidence.² We see nothing clearly erroneous in this finding.

Wife's petition asserted that Husband closed the garage door on her car intentionally to scare her and her daughter, pushed her, and then made verbal threats against her and their children. In opposing the circuit court's ruling, Husband does not dispute the actions that allegedly took place, but rather argues that the circuit court erred in finding that a

² Husband argues that the circuit court erred in focusing on the March 14 confrontation in the garage and should have relied more heavily on his allegations of prior acts of abuse committed against him. The purpose of the domestic abuse statute is to protect victims by making available "remedies designed to separate the parties and avoid future abuse." *Coburn*, 342 Md. at 252. Evidence of past abuse, such as that presented by both Husband and Wife, is admissible and can be relevant in determining whether there is a pattern of abusive behavior, and thus, it is more likely the abuse will recur in the future and the victim is in need of protection. *Id.* at 257-58. The circuit court's oral findings made it clear that it considered Husband's allegations of previous abuse but was not persuaded that all his allegations were true. It was not an abuse of discretion for the circuit court to not be persuaded by the evidence Husband presented.

reasonable person in Wife’s position would have feared for their safety under the circumstances.³ We disagree.

The proper standard for determining whether a petitioner’s fear of imminent harm is reasonable “is an individualized objective one—one that looks at the situation in the light of the circumstances as would be perceived by a reasonable person in the petitioner’s position[.]” *Katsenelenbogen v. Katsenelenbogen*, 365 Md. 122, 138 (2001). A person who has been subjected to previous abuse may be “sensitive to non-verbal signals or code words that have proved threatening in the past to that victim but which someone else, not having that experience, would not perceive to be threatening.” *Id.* at 139. The question for the court is “not whether those perceptions were right or wrong, but whether a reasonable person with that background could perceive the situation in the same way.” *Id.*

The record from the hearing contains ample evidence of previous abusive behavior between the parties. And while the circuit court made explicit findings that some of Husband’s allegations of past abuse were not entirely credible, the court made no such finding regarding Wife’s allegations of past abuse, indicating that the court found Wife’s testimony to be credible. In addition, in making its finding that Wife had proven by a preponderance of the evidence that Husband had assaulted her by both intentionally closing the garage door and physically pushing her, the court explicitly noted that Husband’s

³ Husband also argues that the circuit court erred in failing to consider that his actions could have been taken in self-defense. Husband did not, however, raise the issue of self-defense to the circuit court, and has thus waived this argument. *See Wilson v. State*, 195 Md. App. 647, 693 (2010).

actions were consistent with his previous behavior to enforce his interpretation of the nesting arrangement. Had this been a singular incident, a fear of imminent harm may or may not have been reasonable. But the record contains evidence of a history of abusive acts combined with current allegations that are consistent with that pattern of behavior. Under those circumstances, we see nothing clearly erroneous in the circuit court’s finding that a reasonable person in Wife’s position would have feared for their safety.

With regard to both petitions, the circuit court made clear factual findings based on the credibility of the witnesses and the testimony presented. We, therefore, conclude that the circuit court did not abuse its discretion in denying Husband’s petition for a protective order or in granting Wife’s petition for a protective order.

II. CONSTITUTIONAL RIGHT TO PARENT

Husband next contends that the circuit court erred in granting Wife sole legal and primary physical custody because it violates his constitutional right to parent his children. We conclude, however, that Husband’s argument confuses two different areas of the law.

In his brief, Husband cites well-established precedent to argue that the circuit court could not award temporary custody of the parties’ children to Wife absent evidence of a compelling State interest that outweighed his “fundamental right to make decisions concerning the care, custody, and control” of his children. *Troxel v. Granville*, 530 U.S. 57, 72 (2000). The authority Husband relies upon, however, applies to a termination of parental rights or a custody dispute between a parent and third-party. *See, e.g., Troxel*, 530 U.S. at 72-73 (due process prevents interference in parental rights to award visitation to a third-party absent a showing of unfitness); *Santosky v. Kramer*, 455 U.S. 745, 747-48

(1982) (due process prevents termination of parental rights without clear and convincing evidence). Where, as here, the dispute is between the two parents, “[n]either parent has a superior claim to the exercise of this right to provide ‘care, custody, and control’ of the children.” *McDermott v. Dougherty*, 385 Md. 320, 353 (2005) (citing FL § 5-203(d)(2)). Thus, each parent’s “constitutional right neutralizes the other parent’s constitutional right, leaving, generally, the best interests of the child as the *sole standard* to apply to these types of custody decisions.” *McDermott*, 385 Md. at 353 (emphasis in original).

“[O]nce a court has found from the evidence that abuse has occurred and that a protective order is needed[,] ... the court’s focus must be on fashioning a remedy that is authorized under the statute and that will be most likely to provide that protection.” *Katsenelenbogen*, 365 Md. at 136-37. FL § 4-506 expressly provides that, as part of the relief provided by the protective order, the court may “award temporary custody of a minor child of the respondent and a person eligible for relief.” FL § 4-506(d)(7). Moreover, the court may “establish temporary visitation with a minor child of the respondent and a person eligible for relief on a basis which gives primary consideration to the welfare of the minor child and the safety of any other person eligible for relief.” FL § 4-506(d)(8).

Husband argues that because the only rationale behind the court’s custody order was to limit the frequency that he and Wife had to interact, the same goal could be achieved by crafting a custody schedule that had the same number of transfers but placed the girls with each parent for an equal amount of time. We are not persuaded, however, that the purpose of the circuit court’s custody award was only to limit the number of times per week the parties had to see each other. In its findings, the circuit court noted that both parents had

been emotionally abusive and behaved in ways that were harmful to their daughters. In particular, their daughters had regularly been placed in the middle of their parents' toxic behavior towards each other. They witnessed both parents frequently using derogatory language about the other, were often present when the parties were videotaping each other, were shown videos that one parent had taken of the other, and were encouraged to take sides against one parent by the other. There is nothing in the record to suggest that, if the parties were directed to share legal and physical custody equally, they would be able to effectively coparent from separate locations. To the contrary, the circuit court's findings support the conclusion that the award of primary physical and sole legal custody to one parent was necessary for the daughters' own protection.

The award of temporary custody was authorized by the statute, and the record supports the finding that it was in the daughters' best interests for that relief to be included in the protective order. We, therefore, conclude that the circuit court did not abuse its discretion in awarding custody.

III. JUDICIAL TRAINING

Finally, Husband argues that the case should be remanded to the circuit court so that it can be reconsidered by a judge who has had additional training in domestic violence, child abuse, and implicit bias under FL § 9-101.3. The training program to which Husband refers, however, does not exist. The statute currently in effect provides only for the eventual development of such a training program. FL § 9-101.3. The section of the statute that includes any directive for judges to participate in that training does not take effect until

July 1, 2024.⁴ *See* 2022 MD. LAWS, Ch.351 (S.B. 17). Husband acknowledges as much in his brief. His reliance on this statute is thus impractical, and we consider the issue to be wholly without merit.

CONCLUSION

For the foregoing reasons, we conclude that the circuit court did not abuse its discretion by denying Husband’s petition for a protective order, granting Wife’s petition for a protective order, and awarding temporary custody of the parties’ three children to Wife.

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

⁴ We also note that there are serious questions about the constitutionality of a legislative mandate that requires judges to complete a particular training program or not be assigned to decide types of cases. *See* Letter from Attorney General Brian E. Frosh to Governor Lawrence J. Hogan, Jr. (dated May 11, 2022) (advising that if such a training program is considered mandatory, it would “improperly [intrude] on the constitutional grant of judicial authority and violate[] the principle of separation of powers in Article 8 of the Maryland Declaration of Rights”); Letter from Sandra Brantley, Counsel to the General Assembly, to Chair Luke Clippinger (dated March 2, 2022) (advising that “there is considerable risk that the Court of Appeals would conclude that such legislation violates the separation of powers clause of Article 8 of the Maryland Declaration of Rights and impermissibly encroaches on the powers vested in the judiciary”).