Circuit Court for Howard County
Case No. C-13-FM-18-000530

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1186

September Term, 2018

PASCALIS PAPOURAS

v.

MARY KEVORKIAN

Friedman,
Beachley,
Wells,

JJ.

Opinion by Friedman, J.

Filed: April 16, 2020

Mary Kevorkian was granted a final protective order on behalf of her two minor children against her ex-husband, Pascalis Papouras, by the Circuit Court for Howard County. On appeal, Papouras argues that the circuit court improperly admitted the children's out-of-court statements during the final protective order hearing and that these statements constituted inadmissible hearsay. Although the final protective order has now expired, we conclude that this matter is not moot. In addressing the merits of Papouras's appeal, however, we affirm the decision of the trial court.

FACTS AND PROCEEDINGS

Kevorkian filed a Petition for a Temporary Protective Order on behalf of her daughters, alleging that they had been abused by their father, Papouras. *See generally* MD. CODE, FAMILY LAW ("FL") § 4-506 (governing final protective orders). The petition alleged that Papouras had "often suffocated [the children] by pinching their nose[s] and covering their mouth[s]." The Circuit Court for Howard County entered a Temporary Protective Order against Papouras and, pursuant to FL § 4-505(e), a case referral was made to the Baltimore County Department of Social Services. A social worker from the Department of Social Services (DSS) conducted individual interviews with Kevorkian, Papouras, and their two daughters. Following these interviews, the social worker issued a report ("the DSS Report") that was introduced into evidence at the final protective order hearing held on July 17, 2018. The DSS Report contained statements from both children recounting occasions when Papouras held his hand over their noses and mouths, which the

eldest daughter described as "choking." The social worker was available to testify (and did testify) about the interviews and the DSS Report at the hearing.

Kevorkian also testified at the hearing and described her daughters reporting to her that their father had "choked" them. Papouras objected to this testimony as hearsay, but it was admitted over objection as an explanation for Kevorkian's actions. The circuit court entered a final protective order against Papouras, effective until July 9, 2019.

DISCUSSION

I. MOOTNESS

"A case is moot when there is no longer an existing controversy between the parties at the time it is before the court so that the court cannot provide an effective remedy." *Coburn v. Coburn*, 342 Md. 244, 250 (1996). The final protective order at issue was entered on July 17, 2018 and expired on its own terms on July 9, 2019. The protective order statute states that "all relief granted in a final protective order shall be effective for the period stated in the order." FL § 4-506(j)(1). Here, because the final protective order has expired, there is no longer a live controversy and "no possible relief that [can] be granted." *Suter v. Stuckey*, 402 Md. 211, 219 (2007); *see also La Valle v. La Valle*, 432 Md. 343, 351 (2013) (stating that appellate courts do not ordinarily consider moot questions because "any judgment or decree the court might enter would be without effect"). As a result, this appeal is now moot.

Nevertheless, this Court must still review a trial court's decision if it might have collateral consequences for the parties. *D.L. v. Sheppard Pratt Health Sys., Inc.*, 465 Md.

339, 352 (2019). Under this doctrine, "mootness will not preclude appellate review in situations where a party can demonstrate that collateral consequences flow from the lower court's disposition." *Id*. (citing *Adkins v. State*, 324 Md. 641, 645-46 (1991)).

While Papouras addressed neither the possible mootness of his appeal nor the potential collateral consequences that might preserve it, we have identified two collateral consequences at stake. *First*, because the issuance of a final protective order "is a permanent record of the circuit court," it could result in stigma toward the person against whom it is entered. *Piper v. Layman*, 125 Md. App. 745, 752-53 (1999) (discussing the negative societal perception towards a person who has committed abuse under the Domestic Violence Act, particularly for "a person who has unfairly or inaccurately been labeled an abuser"). *Second*, if another protective order is ever entered against Papouras on behalf of his daughters, as a subsequent abuser, that second protective order could remain in effect for a period of up to two years. FL § 4-506(j)(2) (stating that if another act of abuse is committed by "the same respondent" against "the same person[s] eligible for relief" within one year after the expiration of a prior protective order, the court can issue a second final protective order that will be in effect for a term of two years). We, therefore, hold the impact of these potential consequences is sufficient to overcome the barrier of mootness. We now turn to a discussion of the merits.

II. HEARSAY

Papouras argues that the circuit court erroneously admitted out-of-court statements from the children during Kevorkian's testimony. Maryland Rule 5-801 defines hearsay as

"a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted." MD. RULE 5-801(c). In this case, because the children did not testify,[1] the only evidence proving the truth of the allegations in Kevorkian's Petition for a Temporary Protective Order were the children's out-of-court statements—that their father had "choked" them—offered for the truth of the matter asserted.

Ordinarily, however, our rules of evidence prohibit the introduction of out-of-court statements if they are offered for the truth of the matter asserted because that's hearsay. MD. RULE 5-801(c); MD. RULE 5-802 (outlining the general prohibition against the admissibility of hearsay). The danger of such out-of-court statements is "that the person stating the thing to be a fact is not under oath and subject to cross-examination." *Hall v. Univ. of Maryland Med. Sys. Corp.*, 398 Md. 67, 83-84 (2007).

A. Kevorkian's Testimony

Papouras maintains that the trial court improperly admitted hearsay statements during Kevorkian's testimony, specifically her account of the one occasion where both daughters reported being "choked" by their father. At the time, Kevorkian's counsel proffered that her client's statements were being introduced not for the truth of the matter

[1] Maryland law permits even very young children to testify so long as they have the "capacity to observe, understand, recall, and relate happenings while conscious of a duty to speak the truth." *B.H. v. Anne Arundel Cty. Dep't of Soc. Servs.*, 209 Md. App. 206, 219 n.12 (2012) (quoting *Jones v. State*, 68 Md. App. 162, 166-67 (1986)). In fact, in Maryland criminal trials, "the age of a child may not be the reason for precluding a child from testifying." MD. CODE, COURTS AND JUDICIAL PROCEEDINGS ("CJ") § 9-103. In practice, however, many trial judges are understandably reluctant to put very young witnesses and victims of alleged abuse on the stand.

asserted, but rather for the effect that the children's statements had on their mother in compelling her to seek a final protective order. *See Graves v. State*, 334 Md. 30, 38 (1994) (discussing the admissibility of relevant extrajudicial statements as non-hearsay that are introduced not for the truth of the matter asserted, but "for the purpose of showing that a person relied on and acted upon the statement"). We have reproduced the relevant portion of the hearing transcript:

Kevorkian's Counsel:	And how were [the children] during the party?
Kevorkian:	In the party they were happy, but on the way to the party and on the way back to the party they were telling me about what happened with them that day and how they were punished for --
Papouras's Counsel:	Objection.
Kevorkian's Counsel:	Effect on the hearer, Your Honor. Any truth of the matter will come in through the [DSS Report].
Papouras's Counsel:	Your Honor, it's hearsay. Whatever the children told her is hearsay. And we are here for a protective order hearing and whatever they're saying they are trying to present for the truth of the matter asserted.
Kevorkian's Counsel:	Well, I'm getting her to testify as to why she followed -- or filed a protective order and that's permissible.
Court:	Okay, I'll overrule.

* * *

Kevorkian:	They said that we were punished because we want to go to this birthday party today because it's Father's Day. …
Papouras's Counsel:	Objection. Hearsay, Your Honor.
Court:	Overruled.
Kevorkian:	…[T]hen they said, but we got punished because we wanted to go to this birthday party. *And they said that he choked us*. …
Papouras's Counsel:	Objection.
Court:	Overruled.

(Emphasis added). On this basis, the trial court admitted the statements.

Later, however, in issuing her ruling, the trial judge stated that she "believe[d] that the children [were] telling the truth." Thus, the trial judge appeared to rely on the children's out-of-court statements for their truth, not merely for their effect on the hearer, Kevorkian. We, therefore, hold that the circuit court erred in admitting these statements.

B. Harmless Error

Having held that the trial court erred in admitting the hearsay testimony, we must next determine if that error caused prejudice. Judge Irma S. Raker explained the standard that we are to apply in civil cases:

> It has long been the policy in this State that [appellate courts] will not reverse a [trial] court judgment if the error is harmless. The burden is on the complaining party to show prejudice as well as error. Precise standards for determining prejudice have not been established and depend upon the facts of each individual case. Prejudice can be demonstrated by showing that the error was likely to have affected the verdict [or judgment] below; an error that does not affect the outcome

> of the case is harmless error. We have also found reversible error when the prejudice was substantial. The focus of our inquiry is on the probability, not the possibility, of prejudice.

Flores v. Bell, 398 Md. 27, 33-34 (2007) (internal citations omitted); *see also Barksdale v. Wilkowsky*, 419 Md. 649 (2011) (applying the harmless error standard to erroneous civil jury instructions).

One way to determine whether erroneously admitted evidence was prejudicial or harmless to the outcome of the trial court is to investigate whether the same (or similar) evidence was properly introduced by another method. *See e.g.*, *Gillespie v. Gillespie*, 206 Md. App. 146, 168-69 (2012) (holding that the trial court's possible error of admitting a doctor's report of the appellant's diagnosis of bipolar disorder was harmless because the same evidence was properly admitted during the appellant's own testimony). There is a parallel method of analysis in the criminal context, wherein an error may be considered harmless if the total evidence presented was cumulative. *See, e.g.*, *Potts v. State*, 231 Md. App. 398, 408-09 (2016) ("The essence of this test is the determination whether the cumulative effect of the properly admitted evidence so outweighs the prejudicial nature of the evidence erroneously admitted that there is no reasonable possibility that the decision of the finder of fact would have been different had the tainted evidence been excluded.").

Here, the substance of Kevorkian's testimony to which Papouras objected—Kevorkian's account of her daughters telling her that Papouras "choked" them—was properly admitted as part of the factual findings in the DSS Report. The DSS report was received without objection pursuant to Maryland Rule 5-803(b)(8)(A)(iv), which makes

the "factual findings" contained in an investigative DSS report, like the one at issue here, admissible in a final protective order hearing. MD. RULE 5-803(b)(8)(A)(iv) (permitting "a report … made by a public agency … in a final protective order hearing … [setting forth] factual findings reported to a court … provided that the parties have had a fair opportunity to review the report"). Here, the social worker's narrative account of the children describing how Papouras "choked" them was part of the factual findings of the DSS Report (which the social worker authored). *See Ellsworth v. Sherne Lingerie, Inc.*, 303 Md. 581 (1985) (holding that, under the public investigations exception to the hearsay rule from which Rule 5-803(b)(8)(A)(iv) was derived and is now embedded, the factual findings included in the reports of government officials are admissible). As a result, the substance of Kevorkian's testimony was properly admitted through other evidence.[2]

Finally, we note that the trial judge stated that one factor in her decision to grant the final protective order was the "consisten[cy]" between the accounts from Kevorkian and from the social worker. Having held that Kevorkian's repetition of the children's statements was inadmissible, it is no longer possible to conclude that the social worker's recitation of those same statements was "consistent" with it. Nevertheless, we do not consider the trial judge's observation of the consistency between the two statements to have been necessary to the court's ruling in this case. In light of the DSS social worker's plain statements, both in the DSS report and in her live testimony, and Papouras's failure to deny

[2] As noted above, the DSS social worker also testified in person at the final protective order hearing that she believed the children were "telling the truth" in their account of their father choking them.

the act (if not the intention) of "put[ting] his hand over [his children's] nose[s] and mouth[s]," we are not persuaded that the erroneous admission of Kevorkian's hearsay statements prejudiced the outcome of this case. We, therefore, hold that the trial court's admission of Kevorkian's hearsay statements was harmless and affirm the issuance of the final protective order.[3]

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

[3] Papouras also asks us to review the trial court's finding that there was sufficient evidence supporting the fact that he committed an act of abuse. Having found that the DSS Report, the statements contained therein, and the social worker's testimony were properly admitted, however, we hold that there was sufficient evidence for the trial judge to find "by a preponderance of the evidence that the alleged abuse has occurred." FL § 4-506(c)(1)(ii).