

Circuit Court for Prince George's County
Case No. CADV21-10766

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 1365

September Term, 2021

JOSHUEA DIXON

v.

MASSA FAHNBULLEH

Berger,
Ripken,
Wright, Alexander, Jr.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Berger, J.

Filed: April 15, 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. Rule 1-104.

In this appeal from the Circuit Court for Prince George’s County, appellant Joshua Dixon asserts error in the court’s grant of a final protective order against him and in favor of appellee Massa Fahnbulleh. Specifically, Mr. Dixon asks us to consider the following questions, which we have edited slightly:

- I. Whether the circuit court erred or abused its discretion by issuing a final protective order, where there did not exist a preponderance of the evidence as required by Family Law Article § 4-506(c).
- II. Whether the circuit court abused its discretion in finding Ms. Fahnbulleh to be a credible witness in light of the facts and inferences before the court.

For the reasons that follow, we will affirm the order of the circuit court.

BACKGROUND

On September 15, 2021, the Circuit Court for Prince George’s County granted Mr. Dixon and Ms. Fahnbulleh joint legal and shared physical custody of their minor child, 17-month-old “G.”; Ms. Fahnbulleh did not appear at the custody hearing, asserting that she learned belatedly that her request for continuance of the hearing had been denied. Six days later, Ms. Fahnbulleh filed a petition for a temporary protective order on behalf of herself and G. against Mr. Dixon in the District Court of Maryland for Howard County.

In her petition, Ms. Fahnbulleh alleged that during an argument in December 2020,¹ Mr. Dixon had hit and choked her, shoved her to the ground, and threatened her and her

¹ On some occasions in her petition, Ms. Fahnbulleh states that the incident occurred in December 2021, but given the filing of the petition in September 2021, we assume that to be a clerical error.

family members.² Ms. Fahnbulleh asserted that Mr. Dixon was a very violent “raging alcoholic” who had threatened to take G. to Jamaica, where his relatives lived. Ms. Fahnbulleh added that she “should have full custody of [G.]” because the child would be “better off in [her] care.”

Following a hearing, the district court entered a temporary protective order, effective through October 1, 2021, finding there were reasonable grounds to believe that Mr. Dixon had committed “[a]ssault in any degree” by strangling Ms. Fahnbulleh, throwing her to the ground, and hitting her. The court further granted custody of G. to Ms. Fahnbulleh “until the Final Protective Order hearing,” which was scheduled for October 1, 2021.

Thereafter, the district court transferred the domestic violence action to the Circuit Court for Prince George’s County for the final protective order hearing because there was a pending action in the circuit court “involving one or more of the parties in which there is an existing order or request for relief similar to that being sought in these proceedings.”

At the October 1, 2021 final protective order hearing, Ms. Fahnbulleh reiterated that during an argument in 2020, Mr. Dixon had thrown her against a couch, strangled her, and taken something from her hand and smashed it against the wall, but that she had been afraid to go to the police. She said that Mr. Dixon had also threatened further bodily harm against her, G., and other of her family members.

² Ms. Fahnbulleh also stated that Mr. Dixon had access to a weapon, a “long shot gun.”

Although acknowledging there had been no other physical altercations between them since December 2020, Ms. Fahnbulleh said Mr. Dixon had continued to call her family members to relay messages of threats against her. Ms. Fahnbulleh expressed fear that Mr. Dixon would either kill her and G. or take G. overseas so that Ms. Fahnbulleh would never see the child again. She complained that Mr. Dixon had “a very violent history” and was “very abusive” and said she was so fearful for her life that she had gone into hiding with the help of a domestic violence agency.

Mr. Dixon responded by asserting that Ms. Fahnbulleh was lying, as he had never touched her, had not called her or her family members, and did not know where anyone in her family lived. He claimed that Ms. Fahnbulleh’s complaint of domestic violence, filed within days of the issuance of the court’s custody order, actually related to her desire for sole custody of G., after she had failed to appear at the custody hearing to plead her case.

The circuit court found Ms. Fahnbulleh’s testimony to be credible that Mr. Dixon had strangled her and thrown her to the ground and that the threats were ongoing. The court, therefore, issued a final protective order for a period of one year.

In light of Ms. Fahnbulleh’s assertion that neither she nor her family members felt safe exchanging custody of G. in person with Mr. Dixon -- even at a police station -- the court further granted custody of G. to Ms. Fahnbulleh during the pendency of the final protective order, subject to supervised visitation with Mr. Dixon. The court also ordered Mr. Dixon to pay Ms. Fahnbulleh child support in the amount of \$552 per month.

The court issued a written final protective order incorporating its oral ruling, effective through September 30, 2022. Mr. Dixon noted a timely appeal of the court’s order.

DISCUSSION

Mr. Dixon argues that the circuit court erred or abused its discretion in granting Ms. Fahnbulleh a final protective order against him because she did not prove the alleged abuse by a preponderance of the evidence. In addition, in his view, the court erred in determining that Ms. Fahnbulleh was a credible witness because the court did not consider how the effect of the recently granted joint custody order “galvaniz[ed] Ms. Fahnbulleh to file her petition” for a protective order.

In reviewing the issuance of a final protective order, we accept the circuit court’s findings of facts unless they are clearly erroneous. Maryland Rule 8-131(c); *Barton v. Hirshberg*, 137 Md. App. 1, 21 (2001) (quoting *Piper v. Layman*, 125 Md. App. 745, 754 (1999)). In doing so, we defer to the court’s determinations of credibility, as it has “the opportunity to gauge and observe the witnesses’ behavior and testimony during the [hearing].” *Barton*, 137 Md. App. at 21 (quoting *Ricker v. Ricker*, 114 Md. App. 583, 592 (1997)). In reviewing the circuit court’s ultimate decision to grant a final protective order, we independently apply the law to the particular facts of the case. *Piper*, 125 Md. App. at 754.

To be granted a final protective order, the party seeking the order must show “by a preponderance of the evidence that the alleged abuse has occurred[.]” Maryland Code, § 4-506(c)(1)(ii) of the Family Law Article (“FL”). The Family Law Article defines “abuse”

expansively to include: acts that cause serious bodily harm or place a person in fear of imminent serious bodily harm; assault in any degree; rape or sexual offenses; attempted rape or sexual offenses; false imprisonment; stalking; or revenge porn. FL § 4-501(b). Further, “allegations of past abuse provide the court with additional evidence that may be relevant in assessing the seriousness of the abuse and determining appropriate remedies” because “a history of prior abusive acts implies that there is a stronger likelihood of future abuse.” *Coburn v. Coburn*, 342 Md. 244, 257-58 (1996).

In assessing the credibility of the witnesses who testify at a final protective order hearing, the circuit court is “entitled to accept – or reject – *all, part, or none* of” their testimony, “whether that testimony was or was not contradicted or corroborated by any other evidence.” *Omayaka v. Omayaka*, 417 Md. 643, 659 (2011) (emphasis in original). It is “not our role, as an appellate court, to second-guess the trial judge’s assessment of a witness’s credibility.” *Gizzo v. Gerstman*, 245 Md. App. 168, 203 (2020).

Here, the circuit court found Ms. Fahnbulleh’s testimony to be credible that Mr. Dixon had assaulted and threatened her, her child, and her family, and that she feared him so much she had enlisted the aid of a domestic violence agency to place her somewhere safe. The court also heard from Mr. Dixon. In short, the trial judge did not find his testimony that Ms. Fahnbulleh was lying about the abuse to be credible. Accordingly, the court found, by a preponderance of the evidence, that the abuse had occurred. We see nothing clearly erroneous in the court’s acceptance of Ms. Fahnbulleh’s testimony in finding that Ms. Fahnbulleh proved her allegations of abuse with sufficient material evidence.

Moreover, despite Mr. Dixon’s argument that the circuit court did not consider his assertion that Ms. Fahnbulleh’s petition for protective order was based not on his abuse but on her desire for sole custody of G., the record and the court’s findings demonstrate that the court did consider the content and timing of Ms. Fahnbulleh’s petition for final protective order after the recent “award [of] joint custody,” during a hearing that Ms. Fahnbulleh chose not to attend. The record further reflects that the circuit court considered Ms. Fahnbulleh’s absence from the custody hearing. Presumably, the court was not persuaded by Mr. Dixon’s claim that Ms. Fahnbulleh’s custody concerns were the impetus for the filing of her petition for protective order.

We find no clear error in the circuit court’s assessment of the parties’ credibility or abuse of discretion in its issuance of a final protective order, which included an award of temporary custody of G. to Ms. Fahnbulleh, with supervised visitation with Mr. Dixon, during the pendency of the final protective order.³

**ORDER OF THE CIRCUIT COURT FOR
PRINCE GEORGE’S COUNTY
AFFIRMED. COSTS TO BE PAID BY
APPELLANT.**

³ Pursuant to FL § 4-506(d)(7) & (8), the court’s final protective order may “award temporary custody of a minor child of the respondent and a person eligible for relief” and “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.”