

Circuit Court for Anne Arundel County
Case No. C-02-FM-21-817215

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 1747

September Term, 2021

ANGELA ANGEL

v.

DARRIUS HUMPHREY

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

JJ.

Opinion by Harrell, J.

Filed: August 3, 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.

This case arises out of a decision by the Circuit Court for Anne Arundel County to enter a 22 October 2021 final protective order that, among other things, prohibited Angela Angel, appellant, from having any contact with her ex-husband, Darrius Humphrey, appellee, and their minor daughter, K. Five days after the protective order was granted, Angel filed a notice of appeal. On 19 November 2021, Angel dismissed voluntarily her notice of appeal and filed a motion for reconsideration, by which she sought to have the final protective order vacated. The motion for reconsideration was denied on 8 December 2021. A week later, she filed a second motion for reconsideration that was denied on 27 December 2021. Angel filed a notice of appeal on 6 January 2022. Humphrey did not file a brief on appeal.

ISSUES PRESENTED

Angel presents two issues for our consideration, which we have rephrased slightly as follows:

- I. Whether the circuit court’s denial of Angel’s request for a continuance of the hearing on the motion for final protective order was erroneous, denied her due process, and interfered with her right to parent; and,
- II. Whether the circuit court erred in granting the final protective order because the evidence in support of that decision was not clear and convincing, was based solely on hearsay presented by Humphrey, and was not supported by corroborating evidence.

For reasons explained below, we vacate the court’s 22 October 2021 order and remand the case to the circuit court for further proceedings.

FACTUAL BACKGROUND

The parties are the parents of five children, four of whom were minors at all times pertinent to this case. On 17 October 2014, the Circuit Court for Prince George’s County granted Angel an absolute divorce from Humphrey. Angel was awarded sole legal and sole physical custody of the parties’ minor children and Humphrey was ordered to pay child support. Subsequently, the court issued an order allowing Humphrey certain access to the children during the summer.

A. Temporary Protective Order

On 24 September 2021, the Circuit Court for Anne Arundel County granted a temporary protective order in favor of Humphrey and K. (born on 10 April 2006). The court determined that there were reasonable grounds to believe that on 17 September 2021, at 3:30 p.m., Angel committed acts of child abuse against K. including “[s]tatutory abuse of a child (mental)[,]” causing “[s]erious bodily harm[,]” placing “person(s) eligible for relief in fear of imminent serious bodily harm[,]” “forced abandonment” of the child, and committing “[a]ssault in any degree[.]” The court forwarded the child abuse allegation to the Department of Social Services¹ for investigation and set a hearing on the final protective order for 22 October 2021.

¹ It appears from the record that the case was referred initially to the Prince George’s County Department of Social Services, but because the alleged incident occurred in Anne Arundel County, the case was referred eventually to the Anne Arundel County Department of Social Services.

B. DSS Preliminary Report

On 21 October 2021, the Anne Arundel County Department of Social Services (“DSS”), provided the court with a preliminary report. According to that report, on 29 September 2021, a DSS worker visited Humphrey’s home and met with K. and “her step-mother, Dwan Burton[.]” The DSS worker described that meeting, in part, in her report as follows:

Worker observed [K.] to appear well with no visible signs of maltreatment. [K.] reported the allegation was true and explained what happened. [K.] stated after a Protective Order was denied on 9/17/2021, Ms. Angel picked up [K. and her siblings, D. (born 09/05/2007), J. (04/09/2009), and Y. (07/26/2012)] from the police station in a minivan. [K.] stated Ms. Angel stopped at a gas station and then tried to pull her out of the car. [K.] showed the worker where on her arms Ms. Angel grabbed her, and then explained Ms. Angel was unable to pull her out of the van because of the armrest in the van. Next, [K.] stated her mother dropped her back off at the police station and then refused to pick her back up even after police officers (Ofc. Kirby) called her and explained that [K.] needed to be picked up. [K.] explained the officers then allowed Mr. Humphrey to pick [K.] up as it was clear Ms. Angel would not return. [K.] expressed she was upset about the current situation because the judge did not allow her to speak at the previous Protective Order hearing. [K.] stated she wanted to be heard in court regarding this new Protective Order.

Worker asked [K.] how she felt when she was living with her mom. [K.] stated she did not feel comfortable or safe at her mom’s house. [K.] added it was better when her older sister was at home and she no longer feels safe since her sister left for college. When asked about what she wants the outcome of the Protective Order to be, [K.] explained she does not want to go to her mom’s house and that she wants to stay with her dad.

[K.] stated Ms. Angel has hit her previously. She explained Ms. Angel hits her as punishment whether it is something major or minor. [K.] stated when Ms. Angel hits her, it is normally with an open hand. [K.] reported there are usually no injuries except for one incident that left [K.] with a small cut on her arm and sometimes [K.] has marks from Ms. Angel’s acrylic nails. [K.] stated Ms. Angel has hit her older sister but not her younger siblings. [K.] reported she has not experienced any sexual abuse. She also reported

no drug or alcohol abuse by any member in her household. [K.] stated she used to take medicine for her anxiety, depression, and ADHD, but has not been taking them for a few years.

K. and Burton reported that K. was not attending school while living at her father's home in Anne Arundel County because Angel refused to "unenroll" K. from the Prince George's County school she had been attending and would not provide K.'s immunization records and transcript.

The DSS worker also met with some of K.'s siblings. One of the siblings, D., reported that he and two other siblings, J. and Y., were living with Angel in an Airbnb.² D. stated that Angel "works a lot and sometimes he will be left alone to care for [J.] and [Y.] for long periods of time, sometimes ranging from three weeks to a month." According to D., "sometimes someone checks in on them." D. reported feeling "uncomfortable with the current arrangement."

The DSS worker also met with J. and Y. at their school. J. reported that on 17 September 2021, their father dropped him, K., D., and Y. "at the police station near his house for their mother to pick them up." J. stated that "the police station is not in Prince George's County." When Angel arrived, [K.] wanted to stay with Humphrey, "but his mother picked all of them up and drove off." Angel "later said [K.] wanted to stay with his daddy, so she went back to the police station and dropped [K.] off at the station and they left without her." Thereafter, the police called Angel "to come and get [K.]" According to J., Angel did not "shove [K.] out of the car and there was no fight between"

² We take judicial notice of the fact that Airbnb, Inc. is a company that offers an online marketplace for, among other things, vacation rental properties.

them. J. stated that Angel “did not hit [K.] that day” and that K. “was talking at their mother and their mother was responding.”

The DSS worker reported that J. wanted “to bring to the attention of the court that he wants to live with his father and visit with his mother at his mother’s house.” He said that “he and his siblings have to stay a lot with his mother’s friends as his mother usually goes out for a long time because she needs to do her work.”

Y. reported that on 17 September 2021, Burton told her and her siblings that they had to leave their father’s house, which is in Anne Arundel County, and return to their mother’s house “because the court ordered it.” Humphrey took the children to the police station and dropped them off. When their mother arrived to pick them up, K. “started cursing at” Angel. Y. reported that K. “was going off and talking trash at their mother and then their mother said she could stay with their dad.” According to Y., Angel drove to a gas station and tried to drop off K. there, but her parents argued about where K. should be dropped off. Eventually, Angel drove back to the police station and dropped off K. According to Y., Angel “did not shove or push [K.] out of the car.” Y. reported that her family moves around, that they have stayed at an Airbnb and a hotel, and that they stay with a babysitter or her mother’s friend, “Ms. Cat,” when her mother is out of town.

On 7 October 2021, the DSS worker also met with Angel and reported:

This worker then discussed the reported concerns of physically grabbing [K.] from the car, attempting to leave her at the gas station and then leaving her at the police station. Ms. Angel denied the allegations. Ms. Angel stated she picked the children up at the police station and [K.] did not want to go with her, so she attempted to drop her off at the father’s home but her step mother refused to allow her back. Ms. Angel said she brought [K.] back to the police station and called [K.]’s father who also refused to pick her up. Ms. Angel

stated the police called her father and told him he had to come get her. Ms. Angel denied ever going to the gas station or grabbing [K.] Ms. Angel denied using any type of physical discipline on the children. Ms. Angel stated [K.] has extensive mental health issues. Ms. Angel stated she and Mr. Humphrey have a custody hearing coming up. This worker explained to Ms. Angel that clearly there is an issue causing [K.] not to want to return with her that needs to be explored. This worker explained that it is the Department's recommendation that [K.] should remain in her father's care and custody until the underlying issue is further explored in a mental health evaluation and so [K.] can be enrolled in school.

DSS's preliminary report of 21 October 2021 concluded that the "investigation remains open at this time. Therefore, a finding has not been determined." Notwithstanding the lack of a finding, DSS recommended that K. remain in the care and custody of Humphrey, that Humphrey be granted the authority to make medical, dental, mental health, and educational decisions on behalf of K., that K. receive mental health counseling services, and that "custody of the other children be assessed and addressed by and [sic] court custody evaluator/parent coordinator."

C. Final Protective Order Hearing

A hearing on the final protective order was held on 22 October 2021. Angel was unable to attend the hearing, but her attorney appeared on her behalf. Counsel requested a continuance, but that request was denied. At the start of the hearing, the following colloquy occurred:

THE COURT: All right. Counsel, where is your client?

[COUNSEL FOR ANGEL]: She could not leave her place of employment in Virginia, Your Honor. Had difficulty getting back. We entered our appearance this morning, requested a continuance. The Court obviously rejected that request. I would let the Court know that there is a pending custody matter, which has been ongoing for some time, in Prince George's County. And I believe there is a new case that has been –

THE COURT: All right. I just asked you where your client is.

[COUNSEL FOR ANGEL]: I am sorry, Your Honor.

THE COURT: Okay. So, we are going to proceed. The client was properly served in this matter. Was not only served, but was notified with the temporary protective order of – that if she failed to appear, a final protective order would be entered against her. As such, I will not permit Counsel to participate in this hearing today. You can certainly stay there and listen, but I am going to take some testimony from the Plaintiff, and if I find it sufficient, I will enter a protective order.

Thereafter, the court accepted the preliminary report prepared by DSS. Humphrey testified that Angel was his ex-wife, that they had been divorced for about ten years, and that they had five children together, four of whom were minors. Humphrey explained that he sought a protective order for K., who was fifteen years old.

According to Humphrey, on 17 September 2021, the parties went to the Circuit Court for Anne Arundel County to attend a hearing on a previous protective order. At the hearing there was some discussion about K.’s desire to live with Humphrey. After the hearing, Angel went to Humphrey’s house to pick up the children, but she was told by “the mother of [Humphrey’s] son” that the children were at the police station. Humphrey explained that the couple always exchanged their children at the police station “just to ensure everyone’s safety” and because “there’s a police officer present to make sure everything is cool.” At this point in Humphrey’s testimony, the following colloquy occurred:

[HUMPHREY]: So, Angela makes a bee for the police station. I am – you know, the kids are already placed there. I’m not there anymore, so that there is, you know, no issues. So –

[COUNSEL FOR ANGEL]: Your Honor? May I ask one question, Your Honor.

THE COURT: You may not.

As Humphrey was returning to his home, he received a call from K. who told him that Angel was on her way to his house to bring her there. Humphrey protested because that was not what was agreed upon in court. According to Humphrey, Angel took K. back to the police station, dropped her off, and then “just rolls out.” Prior to dropping-off K. at the police station, “there was an altercation” between K. and her mother. Humphrey stated that K. was present at the court hearing that had occurred earlier that day. He explained that K. questioned Angel’s statement to the judge that she wanted K. to be with her, yet she was keeping the other children with her and “tossing [K.] out[.]” When K. “refused to go,” an “altercation ensued.”

Some time later, Angel called the school at which Humphrey had tried to enroll K. and told them not to enroll her. That resulted in K. missing a month and a half of school. Humphrey testified that “the bottom line is, [Angel] didn’t want [K.]”

Humphrey stated that he filed a protective order because the experience was “very traumatic” and he had to deal with K. “crying for three days straight.” Humphrey testified that K. did not “understand because her mom tells everybody that she wants her, she loves her, this her daughter, but every time, you know, she just tries to get rid of her.” In addition, Humphrey stated that Angel “verbally abuses, beginning the arguments.” When asked by the judge if there was “currently any court ordered visitation and custody schedule[.]” Humphrey responded, “No.” Humphrey also denied that there was any other matter

pending. Humphrey told the court that it would be appropriate for Angel to have supervised visitation, but his understanding was that Angel “doesn’t really want to be around [K.], and [K.] doesn’t really want to be around her mother.” He stated further that he did not think there needed to be any contact between Angel and K. unless there was some family counseling, and that he felt “like they both don’t want contact with each other.” According to Humphrey, when Angel and K. are together there is “always an issue” such as “cursing, screaming, fussing, fighting[,]” and he wanted “it to end” and was “tired of going through” it.

The court asked counsel for Angel if any custody or visitation matter had been filed. Counsel responded that there was “a longstanding custody case in Prince George’s County Circuit Court, where the mother has legal custody of all of the children” and that about a month prior, Angel had filed a request to modify custody that was pending. According to counsel, Angel planned to consent to Humphrey being granted custody of K., but she wanted to make sure that K. had the necessary psychological care because there were “some significant psychological issues.”

At the conclusion of the hearing, the court announced its decision. It noted that the DSS report had not been completed and that the child protective services investigation remained open. Nevertheless, the court recognized that the DSS report contained “valuable information[.]” The court relied on the interview with K. and her statement that her mother “tried to pull her out of the van, and tried to drag her by her arms.” The court stated that “[t]he officer saw some marks on [K.’s] arms.” The court continued:

[THE COURT:] Her mother then took her and dropped her off at or near a police station. That is a little different than taking someone inside a police station for a Safe Harbor type thing. The Court certainly finds that to be [a] form – even though it was of limited duration, of abandonment. All of which created tremendous emotional upset for this child, who apparently has some degree of fragility, due to the family relationships in any manner.

I do find that there is a preponderance of evidence to find that the Respondent committed the following acts of abuse; assault in nth degree, and statutory abuse of a child, both physical and mental, and that by attempting to pull the child out of the vehicle, and then abandoning the child at the police station.

The court granted the final protective order which prohibited Angel from abusing, threatening to abuse, contacting, or harassing K. for a period of one year. The court awarded custody of K. to Humphrey, but made no provision for access or visitation by Angel because it was “ill-equipped at this stage without a completed DSS investigation, without a full custody evaluation, without further information to be able to make a determination as to access at this time.” The court ordered Angel to submit to a mental health evaluation and treatment.

D. Motions for Reconsideration

Five days after the hearing, Angel filed a notice of appeal. On 19 November 2021, Angel dismissed voluntarily her appeal and filed a motion for reconsideration and request to vacate the final protective order. Angel denied putting her hands on K., trying to pull her out of the car, and leaving her unattended at the police station. Angel asserted that Humphrey had filed “multiple petitions for protective order” against her and that on the day of the subject incident involving K., a court had “dismissed the protective order for lack of justification.” In addition, at the 22 October 2021 hearing, Humphrey

“misrepresented the truth” to the court because he failed to disclose a motion to modify custody that was pending in the Circuit Court for Prince George’s County and a custody action filed on 24 September 2021 by Humphrey in the Circuit Court for Anne Arundel County.

Angel pointed out that neither she nor K., who was the subject of the neglect allegation, appeared at the hearing. Angel argued that the final protective order included an indication of neglect that was “extremely prejudicial” to her and that the DSS report did not support the court’s findings. She noted that Humphrey testified that he was not present when the alleged events occurred. According to Angel, K. was brought to the police station for a transfer to her father, was met there by Humphrey’s significant other, Burton, “who facilitated the transfer[,]” and K. was left in Burton’s care. In addition, DSS did not interview her and did not make a finding of neglect. Further, contrary to the court’s finding that the police officer noticed bruising on K.’s arm, “the police report explicitly says that the officer did not see any bruising on” K. and DSS reported that K. had no “indications of maltreatment.”

Angel argued also that her attorney was not permitted to participate in the hearing, to cross-examine Humphrey, or to challenge hearsay testimony by Humphrey. In an affidavit in support of her motion for reconsideration, Angel stated that she was employed by a political consulting group, her job required periodic travel, her job required her to be in Virginia from 17 October through 4 November 2021, and she was unable to leave her “workstation” to attend the hearing. In addition, Angel suffers from narcolepsy which

makes driving difficult for her and she could not make physically the drive from Norfolk, Virginia, to Maryland “without putting [herself] in grave danger[.]”

On 8 December 2021, the court denied Angel’s motion for reconsideration. Seven days later, she filed a second motion for reconsideration in which, among other things, she stated that subsequent to the entry of the final protective order, Child Protective Services concluded its investigation and DSS determined that “the allegations in the Petition for Protective Order are ‘unsubstantiated.’” Angel also attached to her second motion for reconsideration a copy of the statement of charges which indicated the police officer “did not observe any marks or bruises” on K. Based on the officer’s statement, Angel argued that the court erred in finding that “[t]he officer saw some marks on [K.’s] arms.” The court denied Angel’s second motion for reconsideration on 27 December 2021. Angel filed a second notice of appeal on 6 January 2022.

APPEALABILITY

Although Angel filed initially a timely notice of appeal from the grant of the final protective order, that appeal was dismissed voluntarily. Angel’s first motion for reconsideration was filed on 19 November 2021, which was 28 days after the entry of the final protective order. Maryland Rule 8-202(a) requires generally that a “notice of appeal shall be filed within 30 days after entry of the judgment or order from which the appeal is taken.” “Rule 8-202(c) provides for an exception that tolls the running of that appeal period while the court considers certain motions, including motions to alter or amend that are filed within ten days of entry of the judgment or order ‘under Rule 2-534 and/or 2-535.’” *Johnson v. Francis*, 239 Md. App. 530, 541 (2018) (quoting *Ederly v. Ederly*, 213 Md. App.

369, 383 (2013)). A revisory motion, such as a motion to alter or amend, filed more than ten days after entry of judgment “does not stop the running of the thirty day appeal period.” *Blake v. Blake*, 341 Md. 326, 331 (1996). Because Angel filed her first motion for reconsideration more than ten days after entry of the final protective order, the thirty-day period for filing her notice of appeal from that judgment was not tolled.

The second notice of appeal was filed, however, within thirty days of the circuit court’s two orders denying Angel’s motions for reconsideration. When a motion, however labeled, is filed more than ten days, but less than thirty days, after the entry of judgment, it will be treated as a motion under Md. Rule 2-535. *Pickett v. Noba, Inc.*, 114 Md. App. 552, 557 (1997). When the circuit court denies a motion to revise under Rule 2-535 and the party appeals that denial more than thirty days after the entry of the underlying judgment, as occurred here, the propriety of the underlying judgment is not before this Court. *Id.* at 558-59. In such cases, the only question before this Court is whether the denial of the motion to have the underlying judgment revised was an abuse of discretion. *Stuples v. Baltimore City Police Dep’t*, 119 Md. App. 221, 240 (1998).

The denial of a motion to revise a judgment should be reversed only if the decision “was *so far wrong* – to wit, *so egregiously wrong* – as to constitute a clear abuse of discretion.” *Id.* at 232 (emphasis in original). *Accord Estate of Vess*, 234 Md. App. 173, 205 (2017). “An abuse of discretion occurs when the discretion was manifestly unreasonable, or exercised on untenable grounds, or for untenable reasons, or when no reasonable person would take the view adopted by the [trial] court.” *Comptroller of Md. v. Myers*, 251 Md. App. 213, 242 (2021) (quotation marks omitted) (quoting *Wilson-X v.*

Dep't of Hum. Res., 403 Md. 667, 677 (2008)). For these reasons, the only issue we shall consider is whether the circuit court abused its discretion in denying Angel's two motions for reconsideration.

DISCUSSION

I.

In seeking reconsideration of the final protective order, Angel raised several issues that are worth noting here. First, in granting the final protective order, the circuit court had relied, in part, on DSS's preliminary report, but subsequent to the entry of the final order, Child Protective Services completed its investigation and concluded that the allegations in the petition for protective order were unsubstantiated. Second, although the temporary protective order specifically provided that each party may be represented by an attorney, the circuit court did not permit Angel's attorney to participate in the final protective order hearing, most particularly precluding objecting to evidence, including Humphrey's testimony, and conducting cross-examination. Third, contrary to the court's finding that the "officer saw some marks on [K.'s] arms[,]," the police officer wrote in the statement of charges, "I did *not* observe any marks or bruises" on K. (Emphasis added.)

A court's discretion in granting or denying a motion for reconsideration "is always tempered by the requirement that the court correctly apply the law applicable to the case." *Rose v. Rose*, 236 Md. App. 117, 129 (2018) (quoting *Arrington v. State*, 411 Md. 524, 552 (2009)). A court that fails to rectify a judgment based on a misunderstanding of the law applicable to the case or the procedural posture of the case, especially when that error is

brought to its attention in a timely manner by a motion to alter or amend the judgment, abuses its discretion. *Morton v. Schlotzhauer*, 449 Md. 217, 232-33 (2016).

The procedural posture of the instant case was such that, at the time of the 22 October 2021 hearing, the circuit court did not have the final report from DSS because Child Protective Services had not completed its investigation. Angel’s motion for reconsideration provided the court with DSS’s final determination that the allegations against her were “unsubstantiated.” The circuit court’s refusal to reconsider its ruling in light of this final determination was manifestly unreasonable and constituted an abuse of discretion. *Comptroller of Md.*, 251 Md. App. at 242.

In light of our conclusion that the circuit court abused its discretion in failing to grant Angel’s motion for reconsideration, we need not address the court’s finding about a police officer’s observation of marks or bruises on K. Nor shall we comment on the court’s decision to prohibit Angel’s counsel from making objections and cross-examining witnesses, except to note that we are unaware of any authority that would support generally such a decision.

**JUDGMENTS OF THE CIRCUIT COURT
FOR ANNE ARUNDEL COUNTY
VACATED; CASE REMANDED FOR
FURTHER PROCEEDINGS; COSTS TO BE
PAID BY APPELLEE.**