Circuit Court for Montgomery County
Case No. C-15-FM-25-811355

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 1833

September Term, 2025

SHELBY VENSON-SMITH

v.

BRANDON SMITH

Tang,
Albright,
Sharer, J. Frederick
(Senior Judge, Specially Assigned),

JJ.

Opinion by Sharer, J.

Filed: April 13, 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).

Shelby Venson-Smith ("Mother") appeals the grant of a final protective order by the Circuit Court for Montgomery County for the benefit of her ex-husband, Brandon Smith ("Father"), and their two minor children. Disputing the trial court's findings on the evidence presented, Mother presents the following questions for our review, which we have slightly rephrased for clarity[1]:

1. Did the circuit court err in finding that Mother engaged in abuse of the children?

2. Did the circuit court's remedy exceed what was reasonably necessary to protect the children?

Finding neither error nor abuse of discretion, we shall affirm.

FACTS

Mother and Father were married in 2015. During the marriage, two sons were born: C.S. in November 2017, and I.S. in July 2021. The parties separated in November 2023, and, in June 2024, Mother filed a complaint for absolute divorce, custody, and child support in the Circuit Court for Montgomery County, to which Father filed a counterclaim.

The court bifurcated the custody and marital property issues and heard the custody and child-access issues in a three-day trial. The court entered an order granting the parties

[1] Mother phrased her questions as follows:

1. Because the [c]ircuit [c]ourt could not find by a preponderance of evidence that abuse occurred, should the Final Protective Order issued by the [c]ircuit [c]ourt be vacated?

2. Because the [c]ircuit [c]ourt's remedy went beyond what was necessary to ensure the safety of the Child, should the Final Protective Order issued by the [c]ircuit [c]ourt be remanded?

shared 50/50 physical custody of the children and joint legal custody, with neither party to have tie-breaking authority. The custody order contained a "nesting arrangement" whereby the parties rotated through the marital home every three-and-a-half days over a two week period while the children remained in the home. The parties were ordered to refrain from the use of corporal punishment on the children. Additionally, the parties were directed to participate in individual therapy; complete a co-parenting class; communicate through a co-parenting app; if necessary, utilize the services of a parenting coordinator; and obtain a neuropsychological evaluation of C.S.

On September 9, 2025, during Mother's nesting time, an incident occurred between Mother and C.S, which I.S. witnessed. At the time, C.S. was seven years old, and I.S. was four years old. Three days after the incident, Father filed a petition for a protective order on behalf of the children and against Mother. The court issued a temporary protective order ("TPO") that same day, valid through September 19, 2025, on which day it was temporarily extended through September 24, 2025. On September 24, 2025, the court held a contested, final protective order ("FPO") hearing at which only Father and Mother testified.

Father testified to Mother's disciplinary style toward the children. He testified that in late 2021 and into 2022, there were frequent interactions between Mother and C.S. that "involved screaming, shouting, no control, using belts, cooking utensils and spoons[,]" often when C.S. did not cooperate with basic routines, like brushing his teeth or getting dressed. During the parties' separation and divorce, Mother engaged in a lot of "physical punishment" and "sustained verbal abuse" of the children. Father explained that Mother "really, really targeted" the children, isolating them from each other by locking them

behind doors for hours, shoving them against walls, slapping them on their backs, and scratching them. Father testified that, since the fall of 2023, C.S. has had significant behavioral issues where he is aggressive, throws tantrums, and struggles with emotional regulation. C.S. was subsequently diagnosed with an adjustment disorder related to the divorce.

Father explained that their parent coordinator suggested ways to respond to C.S. when he is having a tantrum – comfort, calm, validate the child's feelings, and then reflect those feelings to him. Father testified that, when having a tantrum, C.S. does not need to be physically restrained for his or others' safety. He testified that Mother's use of physical restraint during a tantrum causes escalation. Father denied ever having to physically restrain C.S., testifying that he often hugs C.S. to calm him down. However, Father testified that he once physically "block[ed]" C.S. He described an incident in which they were readying to drive to C.S.'s soccer game when C.S. got out of his seat. Because C.S. was a bit "uncontrollable," Father asked his elderly father to get out of the front passenger seat. C.S. then tried to get into the front of the car, and Father put his arm up to "block" him. He testified that C.S. generally tells the truth.

Father testified that, when he picked up C.S. from school on September 10, he became aware of an incident that had occurred the day before during Mother's nesting time that involved Mother and C.S. He immediately texted Mother, and the following text exchange was admitted into evidence.

> [Father:] Hi Shelby – I just picked up [C.S.] at the front door of school and the very first thing he wanted to talk about was an altercation between the two of you last night that involved him feeling choked on the neck by you

> and you pinning him down. I'm not sure how to unpack this with him right now but you didn't mention it at all in your note[.] [C.S.] said "I couldn't breathe and mom said she would also kill me[.]"
>
> [Mother:] [C.S.] did have an unfortunate tantrum last night since we have started nesting. As you have not shared any of the incidences I know of when they are in your care, I didn't think it necessary to update you. [C.S.] is dealing with a tremendous amount of conflict and what I do notice is when it is the eve of the switch day, [C.S.'s] personality goes back to some of what we experienced prior to nesting. We can discuss with the [parenting coordinator.]

Father called the police, who, after meeting Father and C.S., encouraged Father to take C.S. for a medical forensic examination.

The following day, September 11, 2025, Father took C.S. to the Shady Grove Medical Center for a forensic examination. The report from Shady Grove Medical Center of the forensic examination was admitted into evidence without objection. The report related that initially C.S. told the forensic nurse that he "didn't want to talk about" the incident. Eventually, he told her that he was in the living room "throwing things all around. Mom got mad at me and hit my back with her hand. She also covered my mouth and it was hard to breathe. At one time, she put one hand on my neck. I had trouble breathing and couldn't talk for a second." When asked, C.S. said he was unsure which hand his Mother had used. Photographs were taken of C.S., but no injury was noted. A physical exam was also performed, but no significant physical findings were noted.

A social worker from the Department of Health and Human Services interviewed C.S. on September 16 and 17, 2025, and Mother on September 18. Her report was admitted into evidence without objection. The report related that the social worker went to C.S.'s home to speak with him, but C.S. "repeatedly left the room to go to his father, and his father

had to bring him back downstairs several times." When the social worker asked about the incident, C.S. ran out of the room and said he "did not want to talk about it and that it was family business." The next day, Father brought C.S. to the child welfare office to be interviewed. During the interview, C.S. was more at ease and related the following:

> [Earlier on the day of the incident,] he and his brother [I.S.] had gone to Hyper Kid[z] with their mother. While there, [C.S.] said he was using bad words and singing songs with bad words to [I.S.] He stated that his mother asked him to stop, but he continued because he was having fun. [C.S.] said he continued to do this once they got home. [C.S.] said that his mother became angry with him for not listening. While in the basement playroom, he said he kept saying bad words, and his mother threatened to lock him in the room. He also said she yelled at him and threatened to break his new toy. [C.S.] reported that he became angry and began throwing objects, including a chair, and knocking over clothes and pillows. His mother told him to stop, but . . . his mother kept grabbing him [and] . . . did not stop. [C.S.] stated that both he and his mother were yelling. He reported that while he was lying down, his mother put one hand around his neck and told him she would hurt kill [sic] and call the police. He said he could not breathe and tried to pull her hand off. After she let go, he said she used one hand to cover his mouth and nose and pinched his legs. [C.S.] stated that [I.S.] was present during the incident. He also said that while his mother has hit him before, this was the first time she had choked him.

The next day, the social worker interviewed Mother, who gave a different version of the incident. She said the boys had a good time overall at Hyper Kidz, but C.S.'s "behavior became challenging at the end and continued for the rest of the evening." In the car, he was "bothering" his brother, and he "continued to act out during dinner." Mother said that when C.S. continued not to listen to her after they arrived home and were having dinner, she told him he could not have his candy.

Mother explained that when disciplining C.S., she typically starts with a warning, then takes something away from him, and finally she gives him a time out. When told he

could not have any candy, C.S. became upset, began yelling, and picked up a large dinosaur toy. Believing that he intended to throw the toy at I.S., Mother intervened and C.S. hit her in the leg with the toy, causing a bruise that she showed the social worker. Mother told the social worker that she then:

> sent [I.S.] upstairs for [his] safety. [Mother] stated that the judge had previously informed her she could restrain [C.S.] if he became violent toward himself or others. She said she held [C.S.] from behind on the floor to calm him, but he was kicking and yelling. He shouted things like, "I hate you, I love Daddy more," and "I don't love you, Mommy". [She] said she told him to calm down and once he was calm, they stood up.

At this point, I.S. came downstairs and both children charged at each other. She stepped between the two, using one hand to stop I.S. and the other to stop C.S. She had her hand on C.S.'s chest. She sent I.S. back upstairs while C.S. continued yelling saying, "I hate my brother," "I wish he was dead," and "I'm going to kill him." She moved C.S. to the kitchen where he eventually calmed down and apologized to her.

Mother elaborated on that incident. She testified that, while driving home after spending a couple of hours at an indoor playground, C.S. "was getting a little aggressive with [I.S.] in the car." Once home, C.S. had a hard time settling down to eat dinner, but the "meltdown" started when she told him he could not have any candy after dinner. At some point, C.S. picked up a toy dinosaur and threw it at her, hitting her leg. She then "held" C.S. and told I.S. to go upstairs. C.S. was kicking and screaming on the carpet while she was holding his arms. This continued for a few minutes, during which I.S. came downstairs, and C.S. became aggressive toward I.S., who went back upstairs. C.S. calmed down and eventually "kind of crumpled" into her and said he was sorry. Mother testified that she

never put her hands on C.S.'s neck, squeezed his neck, or threatened to kill him. Mother said she did not know why C.S. told the forensic nurse that she had done so, but she testified that "unfortunately [it is] not the first time that he's reported something that didn't occur."

At the conclusion of the hearing, the court issued an oral ruling from the bench, specifically finding C.S. credible. The court granted the FPO, finding that Mother had committed physical abuse of a child and caused and placed the children in fear of imminent serious bodily harm. The court granted Father sole legal and physical custody of the children and temporary use of the marital home. Mother was granted supervised visitation one day per weekend when convenient for Father; access to all the children's extracurricular activities when Father is also present; and twenty-minute video calls with the children every Monday and Wednesday. The FPO is valid through September 24, 2026. We shall provide additional facts where necessary to answer the questions posed.

Standard of Review

When reviewing the issuance of a final protective order, we accept the trial court's findings of fact unless they are clearly erroneous. *See* Md. Rule 8-131(c). Moreover, we "consider evidence produced at the trial in a light most favorable to the prevailing party[.]" *Ryan v. Thurston*, 276 Md. 390, 392 (1975). We defer the determination as to credibility to the trial court, as it has "the opportunity to gauge and observe the witnesses' behavior and testimony during the [hearing]." *Barton v. Hirshberg*, 137 Md. App. 1, 21 (2001) (quotation marks and citation omitted). The circuit court's ultimate conclusion "should be disturbed only if there has been a clear abuse of discretion." *In re Adoption of Cadence B.*, 417 Md. 146, 155 (2010) (quotation marks and citation omitted). An abuse of discretion,

which "should only be found in the extraordinary, exceptional, or most egregious case[,]" *Wilson v. John Crane, Inc.*, 385 Md. 185, 199 (2005), is found where a "ruling is clearly untenable, unfairly depriving a litigant of a substantial right and denying a just result, when the ruling is violative of fact and logic, or when it constitutes an untenable judicial act that defies reason and works an injustice." *Alexis v. State*, 437 Md. 457, 478 (2014) (quotation marks and citation omitted).

DISCUSSION

Sufficiency/Credibility

Among the tenets of appellate review is the standard that we do not review credibility determinations made in the trial court. Nonetheless, Mother urges us to do just that. She argues that we must reverse because the trial court erred, *vis-à-vis* her conduct toward C.S., because her version of events was more credible. Relatedly, Mother also argues that the court improperly diminished the significance of C.S.'s diagnosis and behavioral challenges and evidence from trained professionals that C.S. suffered no physical harm.

Preservation

Initially, Father responds that Mother has not preserved her challenge as to the court's finding of credibility because she did not raise it below, but even if she had, the court's order was proper and fully supported by the record.

Father's preservation claim is without merit. After a bench trial, a party need not move for judgment at the close of evidence to preserve a claim of evidentiary insufficiency. *Slick v. Reinecker*, 154 Md. App. 312, 349 (2003). In a non-jury trial, a review of the legal

sufficiency of the evidence is provided by Md. Rule 8-131(c) ("When an action has been tried without a jury, an appellate court will review the case on both the law and the evidence. It will not set aside the judgment of the trial court on the evidence unless clearly erroneous[.]"). Accordingly, Mother was not required to move for judgment or raise sufficiency of the evidence to preserve her sufficiency argument on appeal. We now turn to the merits of Mother's sufficiency argument.

Sufficiency

FPOs may be granted for the protection of, among others, children. Md. Code, Family Law ("FL") § 4-501(n). Following a hearing, a court may grant an FPO if it finds by a "preponderance of the evidence" that certain acts of "abuse" have occurred. FL § 4-506(c)(1)(ii). "Preponderance of the evidence means more likely than not." *C.M. v. J.M.*, 258 Md. App. 40, 56-57 (2023) (cleaned up). "Abuse" is defined broadly in the statute to include: (1) an act that causes serious bodily harm; (2) an act that places a person eligible for relief in fear of imminent serious bodily harm; or (3) "child abuse," which is further defined as "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[.]" *See* FL § 4-501(b) and § 5-701(b)(1)(i).

"Mental injury" is defined by statute as "the observable, identifiable, and substantial impairment of a child's mental or psychological ability to function caused by an intentional act or series of acts[.]" FL § 5-701(r). Both physical and mental harm must be intentional and cannot be the product of an accident. FL § 5-701(b)(2). The scienter element of mental and physical injury can be met by showing a parent acted in reckless disregard for the

child's welfare. *McClanahan v. Washington Cnty. Dep't of Soc. Servs.*, 445 Md. 691, 705-06 (2015). "Reckless" conduct is conduct that amounts to a "gross departure from the type of conduct a reasonable person would engage in under the circumstances." *Id*. at 712. "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).

As we consider Mother's argument that we should independently weigh the evidence and draw inferences more favorably to her, we reiterate that it is not our role to reweigh the evidence or make our own credibility determinations when reviewing the findings following a bench trial. It is for the trial court to assess the credibility of witnesses as it is "most aptly situated" and 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.'" *Hripunovs v. Maximova*, 263 Md. App. 244, 263, 269 (2024) (emphasis omitted) (quoting *Omayaka v. Omayaka*, 417 Md. 643, 659 (2011)). *See also* Md. Rule 8-131(c) (providing that "[w]hen an action has been tried without a jury, an appellate court will review the case on both the law and the evidence").[2]

[2] The circuit court explained in detail why it found C.S.'s statements credible. For instance, the court found significant C.S.'s statement to the forensic nurse, *i.e.*, that he was "throwing things" when Mother put her "hand" on his throat and he could not talk for a "second," because C.S.'s retelling showed himself in a bad light and did not make Mother look as bad as he could have by using the singular "hand" and saying the duration was a "second." Additionally, the court found C.S.'s initial actions and statement to the social worker credible, *i.e.*, repeatedly leaving her and looking for Father and stating that he did

(continued…)

Additionally, and contrary to Mother's argument, the court did consider C.S.'s challenging behavior, stating:

> there's no need to put your hand around a child . . . and squeeze it to the point that they have trouble breathing and talking, even for a second, and then to say that you're going to kill them. I find that it makes sense that tempers were flared. The child admitted he was throwing things around the house, clearly he needed to be disciplined. I find by a preponderance of the evidence this is not discipline and it's not justified.

The court also addressed the lack of injuries to C.S. but did not find that fact persuasive, stating that bruising "is highly dependent on timing and on the color of one's skin[,]" noting that C.S. is "not a light-skinned child[.]" Under the circumstances presented, we find no error in the trial court's findings.

The Final Protective Order

After finding that Mother had physically abused seven-year-old C.S. by placing her hand on his throat, stopping his breathing, and issuing a death threat, the circuit court granted Father sole legal and physical custody of the children for the duration of the FPO, and temporary use and possession of the marital home. Mother was granted supervised visitation one day per weekend at the convenience of the parties at Safe Passages and could attend all extracurricular activities open to the public at which Father was present. Additionally, she and children were to have twenty-minute video calls every Monday and Wednesday at a specified time.

not want to talk to her about the incident, as C.S.'s memory of the incident was likely quite painful.

Mother argues that the circuit court erred in its remedy because it was "punitive"; "went beyond what was necessary" to ensure the children's safety; and is "extremely detrimental" to her relationship with them. She explains that the remedy was punitive as it gave Father "control" over her access to the children because: 1) the supervised access requires a day/time that is convenient for Father, and 2) Father's presence is required for her to attend any extracurricular activities. She also suggests that the court should have recommended: 1) a private supervision service instead of a public service, which she argues would have provided for "more authentic" and more frequent interactions, and 2) training focused on helping both parents handle C.S.'s outbursts.

We do not find Mother's argument persuasive. The circuit court's visitation limitations are within its statutorily prescribed discretion. *See* FL § 4-506(d)(1)-(14) (listing the forms of relief that a circuit court may include in an FPO). And, we are persuaded that the court appropriately tailored the relief to the evidence. After finding that Mother impeded her seven-year-old son's breathing during which she issued a death threat, the circuit court could, and did, reasonably conclude that unsupervised access posed a risk to C.S. Supervised visitation in Father's presence and sole custody to Father were measured, protective responses designed to prevent recurrence of the incident. *See Katsenelenbogen v. Katsenelenbogen*, 365 Md. 122, 134 (2001) (stating that the purpose of a protective order is "to protect and aid victims of domestic abuse" and to provide "immediate and effective remed[ies]" that are wide in variety and scope to "avoid future abuse" (quotation marks and citations omitted)).

On the record before us, we find no abuse of discretion in the relief imposed. The Order was statutorily permitted, tailored to the court's factual findings, and consistent with the goals of Maryland's domestic violence statute of protection and prevention.

JUDGMENT OF THE CIRCUIT COURT FOR MONTGOMERY COUNTY AFFIRMED.

COSTS TO BE PAID BY APPELLANT.