UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 0861

September Term, 2015

APRIL LANIER

v.

ERNEST HASKINS

Meredith,
Berger,
Nazarian,

JJ.

Opinion by Nazarian, J.

Filed: March 8, 2016

April Lanier ("Mother") appeals the entry of a protective order by the Circuit Court for Prince George's County that prohibited her from seeing her children for a four-month period. This order had been grounded in a finding that Mother had abused the children, a finding she characterizes as clear error. Mother did not, however, order the entire transcript of the circuit court hearing. And because the absence of a transcript makes it impossible for us to reach the conclusion she asks us to reach, we dismiss the appeal.

DISCUSSION

Ernest Haskins ("Father") sought a protective order against Mother on February 26, 2015. Father alleged that Mother had burned the couple's two children, then ages five and three (we need not give their names here). Mother filed a cross-petition and the court heard the cases together on March 12, 2015. At the hearing, the court reviewed medical records that Father claimed demonstrated that Mother had abused the children. The court also heard testimony from the parties and at least one witness. This is as much detail as we can recount, however, because Mother ordered only the portion of the hearing transcript memorializing the court's decision. The hearing began at 9:00 a.m., and the transcript of the judge's ruling is time-stamped 3:56 p.m. Even assuming the normal breaks over the course of the day, we know that we are missing at least several hours of testimony.

Maryland Rule 8-411 requires an appellant to order a transcript of all relevant trial court proceedings:

> Unless a copy of the transcript is already on file, the appellant shall order in writing from the court reporter a transcript containing:
>
> (1) *a transcription of* (A) *all the testimony* or [other provisions not relevant to this appeal].

(Emphasis added.)

Because the transcript was incomplete, this Court issued a show cause order on February 17, 2016, in which we directed Mother to file the transcript for the entire hearing or show cause why we should not dismiss the appeal. Mother responded on February 24, 2016, and explained that she was unable to pay for the transcript, which would have cost over $1,000. She argued as well that "the Judge's ruling that is challenged in this appeal—the finding that the children had suffered cigarette burns—was based on the documents which were exhibits from the hearing and produced to this Court as part of the record." In essence, she contends, the medical records alone formed the (insufficient, in her view) basis for the court's finding of abuse.

Unfortunately, and for two reasons, we cannot evaluate Mother's contentions properly without the full hearing transcript. *First*, Mother has not pointed to an error of law; she is challenging the circuit court's finding, as a matter of fact, that she abused the children. Her arguments require us to review the evidence—testimonial and documentary—against a highly deferential standard. *Piper v. Layman*, 125 Md. App. 745,

754 (1999) ("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."). She challenges the trial court's assessment of the evidence and testimony underlying that finding, but "[w]e leave the determination of credibility to the trial court, who has 'the opportunity to gauge and observe the witnesses' behavior *and testimony* during the trial.'" *Barton v. Hirshberg*, 137 Md. App. 1, 21 (2001) (emphasis added) (quoting *Ricker v. Ricker*, 114 Md. App. 583, 592 (1997)). We cannot review the court's finding of abuse in a vacuum, and especially without being able to see and review everything, including the testimony, on which the trial court relied.

Second, we know from the court's ruling that the testimony mattered. When describing what he considered in reaching his decision, the trial judge *began* with the hearing testimony: "*I've listened to the testimony*, I've reviewed the exhibits, I've looked at the text messages, reviewed the DSS report . . ." (Emphasis added.) Over the course of his ruling, he referenced "a lot of talk about money," and in a subsequent hearing on Mother's motion for reconsideration, the judge stated specifically that he "*remember[s] the testimony* and the evidence and I've reviewed my own notes and I've got them right here from the trial." (Emphasis added.)

For us to reverse the entry of the protective order at issue here, as Mother asks, we would need to find clear error in the circuit court's conclusion that Mother abused the children. But even if we were to agree with her that the documentary record by itself fell short—and we have reached no such conclusion—we cannot overlook the hearing

testimony, which indisputably contributed to the court's decision. This sort of fact- and credibility-intensive case cannot be reviewed without an appropriate transcript, and because Mother has not ordered one, we dismiss the appeal pursuant to Maryland Rules 8-602(a)(6) and 8-413(a)(2). *See Laukenmann v. Laukenmann*, 17 Md. App. 107, 109 (1973).

APPEAL DISMISSED; COSTS TO BE PAID BY APPELLANT.