Circuit Court for Harford County
Case No. 12-C-16-001347

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2258

September Term, 2016

PHILIPPE H. DeROSIER

v.

ARETHA M. DeROSIER

Eyler, Deborah S.,
Friedman,
Battaglia, Lynne A.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Friedman, J.

Filed: December 19, 2017

Phillippe DeRosier appeals the Circuit Court for Harford County's grant of a final protective order against him ordering him not to abuse, threaten to abuse, harass, or contact his wife, Aretha DeRosier, and his youngest son ("C."). We affirm.

BACKGROUND

The final protective order at issue in this appeal concerns Mr. DeRosier's discipline of his and Mrs. DeRosier's then-11-year-old son, C., who has a history of behavioral issues, including Attention Deficit Disorder. At the time of the incident he was also being evaluated for autism.[1] Mr. DeRosier testified that, on the night at issue, C. was misbehaving and would not respond to verbal warnings, and so to correct C.'s behavior, Mr. DeRosier spanked C. three or four times with an open hand. Mrs. DeRosier, however, testified that Mr. DeRosier disciplined C. by repeatedly punching him in the mouth and stomach with a closed fist. She additionally claims that Mr. DeRosier threatened violence against her.

Due to this incident, Mrs. DeRosier was granted a temporary protective order against Mr. DeRosier for herself and C. by the District Court of Maryland for Harford County. The Circuit Court for Harford County held a final protective order hearing two weeks later. The circuit court heard testimony from both Mr. and Mrs. DeRosier. It also heard testimony from Bethany Fisher, the Child Protective Services ("CPS") case worker

[1] The parties appear to dispute whether C. has autism. Mr. DeRosier states in his brief that no expert testimony was provided at the final protective order hearing regarding a specific DSM-V psychological diagnosis of autism for C. Mrs. DeRosier, however, testified at the hearing that, as part of C.'s Individualized Education Program, he was evaluated by a psychologist and his test results were consistent with children on the moderate range of the autism spectrum. The trial court did not resolve the issue and neither do we.

assigned to investigate the incident. At the time of the hearing, the CPS investigation was still in progress and no findings had been made or conclusions drawn as to whether Mr. DeRosier had abused C. As reflected by the checked boxes on the final protective order form, the circuit court concluded that Mr. DeRosier had committed three specific acts of abuse: "(i) Placed person(s) eligible for relief in fear of imminent serious bodily harm; (ii) Assault in any degree; and (iii) Statutory abuse of a child (physical)." Accordingly, the circuit court granted a final protective order against Mr. DeRosier.

Mr. DeRosier filed a post-trial motion in which he argued that the circuit court erred in granting the final protective order because there was insufficient evidence supporting a finding of abuse and that his conduct fell within the "reasonable corporal punishment" exception to the child abuse statute. The circuit court re-opened the case to take additional evidence and hear testimony regarding the Child Protective Services investigation that had, in the meantime, ruled the abuse allegations unsubstantiated, meaning that the agency could neither rule out abuse nor conclusively find that it occurred. Ultimately, the circuit court ordered that its original final protective order would remain in effect without modification. Mr. DeRosier noted this timely appeal.

ANALYSIS

I. Mootness

As a preliminary issue, we note that although the final protective order that is the subject of this appeal expired on May 16, 2017, that expiration did not automatically render Mr. DeRosier's appeal moot. Typically, 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). A finding of abuse and the grant of a final protective order, however, is a permanent record of the circuit court and, if incorrect, presents a potential for prejudice to the respondent. *Piper v. Layman*, 125 Md. App. 745, 753 (1999). Thus, a person against whom a final protective order is granted "has an interest in exoneration even if the period of the protective order has expired without incident." *Id.* Thus, "in light of the stigma that is likely to attach to a person judicially determined to have committed abuse subject to protection under the Domestic Violence Act … the expiration of the protective order does not automatically render the matter moot." *Id.* Mr. DeRosier's appeal of the circuit court's grant of a final protective order against him, therefore, is not moot.

II. The Merits of the Final Protective Order

Mr. DeRosier argues that there was insufficient evidence to support a finding of abuse by the circuit court, and therefore that the circuit court erred in granting a final protective order against him. A circuit court may grant a final protective order "if the judge finds by a preponderance of the evidence that the alleged abuse has occurred." Md. Code, Family Law ("FL") art., § 4-506(c)(1)(ii) (2015). 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, rape or sexual offenses, attempted rape or sexual offenses, false imprisonment, or stalking. FL § 4-501(b). When a petitioner seeks relief for a child, "abuse" is 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." FL § 5-701(b)(1)(i). "[R]easonable corporal punishment in light of the age and

condition of the child," however, is not considered prohibited child abuse. FL § 4-501(b)(2).

The petitioner for a final protective order bears the burden of showing by a preponderance of the evidence that the alleged abuse occurred. FL § 4-506(c)(1)(ii). When the parties present conflicting evidence, we accept the trial court's findings of facts unless they are clearly erroneous. Md. Rule 8-131(c); *Barton v. Hirshberg*, 137 Md. App. 1, 21 (2001). In doing so, we defer to the trial court's determinations of credibility, as it has "the opportunity to gauge and observe the witnesses' behavior and testimony during the trial." *Barton*, 137 Md. App. at 21 (quoting *Ricker v. Ricker*, 114 Md. App. 583, 592 (1997)). Thus, if the circuit court's factual conclusions are supported by substantial evidence, we will not disturb those findings. *Barton*, 137 Md. App. at 22; *L.W. Wolfe Enters. Inc. v. Md. Nat'l Golf L.P.*, 165 Md. App. 339, 343 (2005). In reviewing the 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.[2]

[2] In preparing his brief, Mr. DeRosier was unable to find a reported Maryland precedent to define the standard of appellate review of findings of "reasonable corporal punishment." In the absence of reported authority, Mr. DeRosier's counsel did what he must have assumed to be the next best thing: he cited and provided us copies of two unreported opinions of this Court. This is *not* the next best thing. Citation to our unreported decisions is prohibited by Rule 1-104, and for a good reason: our unreported opinions state the views of a panel of three judges. Only our reported opinions reflect the judgment of the Court as a whole and only those opinions are given the weight of precedential authority. Md. R. 1-104(a). All is not lost, however. Counsel can scavenge in our unreported opinions for the names of reported opinions on which the three-judge panel relied. Alternatively, counsel must argue by analogy to prior similar, if not identical, reported cases. Here, even if there is no reported opinion identifying the standard of appellate review, one can learn from many, many reported opinions that we review a trial court's factual determinations on the highly deferential clearly erroneous standard, defer

We conclude that the circuit court's grant of a final protective order against Mr. DeRosier was not clearly erroneous because there was sufficient evidence presented for the court to find that Mr. DeRosier abused C. in a manner that exceeded reasonable corporal punishment. Mrs. DeRosier testified that she observed Mr. DeRosier punch C. in the mouth and stomach. Although Mr. DeRosier has maintained that he administered reasonable corporal punishment and denies hitting C. in the face, the circuit court found Mrs. DeRosier's testimony more credible. We defer to the circuit court's credibility determination because it had the opportunity to view the witnesses as they testified and observe the parties throughout the proceedings. *See Ricker*, 114 Md. App. at 592 ("The determination of credibility is a matter left entirely to the trial judge."). Based on those observations, the circuit court believed Mrs. DeRosier's account of the incident and concluded that Mr. DeRosier had committed abuse. Because we see no clear error in the circuit court's grant of the final protective order against Mr. DeRosier, we affirm.

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

to its judgment on the credibility of witnesses absent an abuse of discretion, and review its legal decisions without deference. *See, e.g., Barton v. Hirshberg*, 137 Md. App. 1 (2001); *Piper v. Layman*, 125 Md. App. 745 (1999).