

UNREPORTED\*

IN THE APPELLATE COURT

OF MARYLAND

No. 2456

September Term, 2024

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MULUGET GEBREHAWARIAT

v.

OMAR DIBBA

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Berger,  
Ripken,  
Lazerow, Alan C.  
(Specially Assigned),

JJ.

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Opinion by Ripken, J.

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Filed: May 15, 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).

This appeal arises from the denial of a final protective order by the Circuit Court for Montgomery County in January of 2025. Appellant, Muluget Gebrehawariat (“Mother”), filed the petition in October of 2024 on behalf of her son (“Child”),<sup>1</sup> seeking a protective order against Omar Dibba (“Father”), appellee, based on alleged sexual abuse of Child. The trial court granted a temporary protective order, which remained in effect while the proceedings moved forward, and ordered the Montgomery County Department of Health and Human Services (the “Department”) to conduct an investigation and provide a report at the next hearing on the matter.

In November of 2024, during the next hearing on the final protective order, the Department supplied a report that addressed the findings of its investigation into the alleged sexual assault incidents (“the Report”). Subsequently, Mother issued a subpoena *duces tecum* to the Custodian of Records for the Department, Child Welfare Services, and a named Department social worker seeking the production of records, forensic interview recordings, and testimony regarding the investigation described in the Report. The Department moved to quash the subpoena, claiming that the information sought was protected under the Maryland Code (2007, 2019 Repl. Vol.), section 1-201 *et seq.* of the Human Services Article (“HS”), and the Code of Maryland Regulations (“COMAR”) 07.01.02.06 and 07.01.07.04. Mother opposed the motion to quash, asserting that the Report was insufficient, and that the Department was permitted to disclose the statutorily

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<sup>1</sup> Child is the shared son of Mother and Father.

confidential records with appropriate limitations and a court order.<sup>2</sup> On December 9, 2024, the court granted the Department’s motion to quash.

At the final protective order hearing weeks later, Mother called as a witness a psychologist who she had hired. She offered the witness as an expert to testify regarding a supplemental forensic interview that she contended the psychologist conducted with Child following the court’s grant of the motion to quash Mother’s subpoena. Following argument on the issue, the court found that evidence regarding the conversation that Mother’s expert had with Child was protected under the patient-therapist privilege and therefore inadmissible. The court permitted the expert to testify regarding information related to the basis for the Mother’s expert’s report of abuse to the Department and regarding standard forensic interview techniques.

At the conclusion of the hearing, the court found that Mother failed to meet her burden by a preponderance of the evidence and denied entry of a final protective order. Mother noted this timely appeal challenging the court’s denial of the final protective order, and presenting the following issues for our review:<sup>3</sup>

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<sup>2</sup> Mother additionally averred that she had a due process right to inspect the records and receive the testimony and that doing so served the best interests of the Child.

<sup>3</sup> Rephrased and consolidated from:

1. Did the trial court commit legal error when it found that the Department’s records were protected from disclosure to [Mother—]the parent of the child at issue[—]and granted the Department’s motion to quash [Mother]’s subpoena?
2. Did the trial court abuse its discretion when it granted the Department’s motion to quash [Mother]’s subpoena despite the Department’s failure to show good cause for its grant?

- I. Whether the trial court erred in granting the Department’s motion to quash.
- II. Whether the trial court erred in limiting the expert testimony offered by Mother based on patient-therapist privilege.

For the reasons to follow, we affirm the decision of the circuit court.

## **FACTUAL AND PROCEDURAL BACKGROUND**

### *Precipitating Events*

Mother and Father are the parents of Child, born in 2019. Mother and Father divorced in 2022 and were granted joint legal and shared physical custody of Child at that time.

According to Mother, in July of 2024, after returning from a stay at Father’s home pursuant to the custody arrangement, Mother noticed that Child was “exhibit[ing] sexual behaviors” while in bed—such as thrusting and pushing his hips. When Mother inquired as to what was bothering him, Child disclosed that Father had “put his finger in his bottoms[.]” Mother added that Child kept staring at the ceiling while answering her questions and “kept referring to number two” saying, “Mom, my dad’s number two was all over up.”

The following morning, Mother took Child to the emergency room at Holy Cross Hospital in Silver Spring for an examination regarding the alleged assault. At the hospital, Child was examined by doctors who contacted the Department to investigate. Mother

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3. Did the trial court commit legal error by finding that a privilege existed between [Mother]’s expert and the parties’ minor child?
  4. Did the trial court commit legal error by finding that a privilege existed between [Mother]’s expert and the parties’ minor child after [Child] disclosed abuse to the expert?

points to a notation in the records indicating that Child’s diagnosis was “[c]hild abuse, sexual, initial encounter” in the hospital after-visit summary. The Montgomery County Special Victims Investigations Division (“SVID”) opened a case to investigate the claim. Two weeks later, on September 12, 2024, SVID conducted a forensic interview with Child as a part of its investigation.<sup>4</sup> Following the forensic interview, as Child did not disclose any abuse and stated that “the trusted adults in his life are his mother and his father[.]” SVID closed the case as “unfounded.”

Mother then enrolled Child in therapy. During an initial therapy session, it is contended that Child disclosed the alleged sexual assault. Child’s therapist subsequently contacted the Department; however, the Department did not pursue the case as it was the same contention that was previously unfounded and hence closed.

*Investigation and Motion to Quash*

In October of 2024, Mother filed a petition for protection in the District Court for Montgomery County, based on the alleged July 2024 incident. As a result, the court ordered the Department to conduct an investigation. In so doing, the Department interviewed Child at Mother’s residence, conducted home visits, interviewed both parents, spoke to Child’s therapist, medically examined Child, and forensically interviewed Child at the Tree House Child Advocacy Center. During the at-home interview, Child disclosed that Father had put his finger inside of Child’s bottom. Child was unable to provide a timeframe; however, he stated that this occurred on more than one occasion. During the forensic interview, Child

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<sup>4</sup> Mother and Father continued their joint custody schedule during this time.

again stated that Father had put his finger in Child’s bottom on more than one occasion.

The Department produced the Report at a hearing conducted on November 26, 2024; the related testimony summarized the investigation and included a recommendation to deny the protective order.<sup>5</sup> The parties were given access to and reviewed the Report at the hearing. The court extended the temporary protective order—initially issued on October 31, 2024—through December 12, 2024; the court also transferred the case to the Circuit Court for Montgomery County for a hearing to be conducted on December 12 regarding the final disposition of the protective order. Subsequently, Mother obtained and then served a subpoena on the Department, Child Welfare Services, and the Department social worker who conducted the interviews, seeking the production of the records, forensic interview recordings, and testimony regarding the investigation described in the Report. The Department moved to quash the subpoena, claiming that the information sought was protected under HS sections 1-201 through 1-203 and COMAR 07.01.02.06 and 07.01.07.04.

Mother opposed the motion to quash, arguing in her response that the Report was insufficient, that she had a due process right to inspect the records and receive the testimony, and that the Department could disclose limited versions of the statutorily confidential records with a court order, and doing so served the best interests of the Child. The court granted the motion to quash without a hearing on December 9, 2024. At the final protective order hearing the following day, Mother made an oral motion for

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<sup>5</sup> In the Report the Department also recommended that Child continue therapeutic services.

reconsideration, which was denied without prejudice.

*Final Protective Order Hearings*

The final protective order hearing took place over several weeks due to continuances and holiday interruptions. On December 11, 2024, Mother filed a “Motion to Permit Expert Witness to Conduct Child Forensic Interview in Chambers[,]” which requested that—because Mother did not have access to the video recording of the forensic interview conducted by the Department—she instead be allowed to have her own expert psychologist conduct an additional forensic interview *in camera* and without the parties present, but recorded and accessible. The parties appeared for a hearing the following day, and, after argument on the issue, the court took the motion under advisement to be decided after the presentation of the rest of Mother’s case. The court extended the temporary protective order through 11:59 p.m. on December 18, 2024 and continued the case to that date.

Between hearing days, before the court had ruled on the pending motion, Mother’s expert, Dr. Kelly Champion (“Dr. Champion”), conducted a forensic interview with Child. The parties appeared for a hearing on December 18th, and Mother withdrew her motion for an *in camera* forensic interview and instead asked that Dr. Champion be permitted to testify regarding the forensic interview she conducted with Child.<sup>6</sup> After Dr. Champion began her testimony regarding standard forensic interviewing practices, the court became concerned that any statements regarding the forensic interview conducted by Dr. Champion fell under the patient-therapist privilege and had not been waived by a best interest attorney

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<sup>6</sup> Dr. Champion was admitted as an expert in child abuse, forensic interviews, child protective service investigations, and children’s memory and development.

on behalf of Child. Mother presented argument contending there was no applicable privilege and no best interest attorney was required. The court continued the hearing to January 24, 2025 and the issue remained pending. The court granted Father supervised access to Child in the interim. Following the hearing, the Department issued a “Notice of Investigation Closing” to Father, which informed him that the Department had completed and closed its investigation and found that the allegations of sexual abuse were “[r]uled [o]ut”; the notice also contained the conclusion that Father was “not the individual found responsible for indicated or substantiated child abuse or neglect.”

Weeks later, Mother submitted a “Bench Memorandum of Authorities” on the issue of patient-therapist privilege between Dr. Champion and Child. The following day, which was the resumption of and last date of the final protective order hearing, following further argument on the issue, the court ruled that a privilege existed between Child and Dr. Champion, which had not been waived. Therefore, Dr. Champion was not permitted to testify regarding anything Child said to her during the forensic interview. The court permitted Dr. Champion to testify regarding the reason(s) she reported the findings of her interview to the Department and standard protocol in forensic interviewing.

At the conclusion of Dr. Champion’s testimony, Mother rested her case in chief. Father did not present any evidence. Following closing argument from both sides, the court issued an oral ruling, noting that Mother did not take any legal action to protect her son from alleged abuse between Child’s hospital visit and filing for the protective order months later. Further, the court stated:

[Mother] has the burden of proof in this case. It's not a particularly high standard, it's a preponderance of the evidence. But I find that [Mother has] failed to carry her burden of proof in this case. I don't know what's going on between these parties but I have grave concerns about this child's wellbeing. I don't find that it's been proven, there's been nothing that's been brought to my attention that anybody who's interviewed this child, apparently he's been interviewed now seven times according to what I've heard. I don't know if seven is the right number, but it's at least three. And they're subjecting this child, [Mother's] subjecting this child to interview after interview and it's getting nowhere.

And the constant and repetitive bringing this up with the child can't possibly be good for him. At some point this needs to get resolved. I did enter a supervised access order in the family case because quite frankly this is completely interrelated with the family case. So that's in place so there's protection for this child because as of right now, [Father is] not going to have unsupervised access with this child. At some point, that child is entitled to have a relationship with his father which he did have at one point. But apparently that's been terminated. It's tragic and it's unfortunate.

But again, there's been no police charges brought. I looked at the Exhibit that you referenced, [Mother's counsel], the exhibit from Holy Cross Hospital. And they do mention diagnosis child abuse, sexual initial encounter. But in the instructions[,] what they say is if you have concern that a child has been abused, a CPS report needs to be made. That was done. CPS has been contacted for an official report. The Tree House is a place where people are trained to do a special forensic interview with young children. That's been done. . . . [The Tree House] [r]ecommend[ed] that you do not allow your son to go to his father's household until after the investigation has occurred. That's been done. Detective from MCPS, I'm assuming that means not MCPS, Montgomery County Public Schools. I'm assuming when they say a detective they're talking about Montgomery County Police Department, will contact you tomorrow to arrange for a special interview. That's happened.

To my knowledge [Father] hasn't been charged. He's been through this process. Nobody other than Dr. Champion apparently, although I didn't allow the ultimate opinion of whether this respondent abused the child, she's the only one that's come up with it. And even after she reported it to CPS, again, there's been no further finding. I didn't allow in the exhibit, but she, Dr. Champion, did testify that they made no change in their previous determination based upon her report. So again, further investigation was done.

There comes a point when the investigation has to stop and things have to move forward.

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So for all of those reasons, and largely because I find [Mother] not credible, I'm going to deny the request for the entry of a final protective order. And I'm going to recommend to the parties that they get themselves into the family law case and get the case resolved in the forum which is probably best suited to determine what's in the best interest of this child.

The court's order denying the final protective order was entered that same day. Mother noted this timely appeal, asserting that the court denied the final protective order without various pieces of crucial evidence due to the alleged errors. The Association of Professionals Solving the Abuse of Children subsequently filed an *amicus curiae* brief in support of Mother, which was accepted by this court on September 2, 2025. Additional facts are provided below as relevant.

## DISCUSSION<sup>7</sup>

### I. THE CIRCUIT COURT DID NOT ERR IN GRANTING THE DEPARTMENT'S MOTION TO QUASH.

#### A. Party Contentions

Mother contends that the circuit court erred in granting the Department's motion to quash and, as we interpret her contention, it flows that this error led to the court's denial of

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<sup>7</sup> We note for completeness that the denial of a final protective order here is a final judgment as it: (1) is an unqualified, final disposition of the matter in controversy; (2) adjudicates all claims against all parties in the matter; and (3) was properly recorded in accordance with Maryland Rule 2-601. *See Rohrbeck v. Rohrbeck*, 318 Md. 28, 41 (1989); *Metro Maint. Sys. South, Inc. v. Milburn*, 442 Md. 289, 298 (2015) (citing *Rohrbeck*, 318 Md. at 41); Kevin F. Arthur, *Finality of Judgments and Other Appellate Trigger Issues* § 3 (4th ed. 2025); *see also St. Joseph Med. Ctr., Inc. v. Cardiac Surgery Assocs., P.A.*, 392 Md. 75, 88–89 (2006); *Clarke v. Gibson*, 492 Md. 557, 568 (2025).

the final protective order. Mother asserts that the grant of the motion to quash was in error because: 1) the records were not legally protected from disclosure to a parent; 2) Maryland’s discovery rules are liberally construed; 3) the Department failed to demonstrate good cause for the order; and 4) denying Mother’s request to access the evidence violated her due process rights to establish any inaccuracies in the Report.<sup>8</sup> Father did not file a brief in this appeal.

### **B. Standard of Review**

We review a circuit court’s denial of a motion for a protective order for an abuse of discretion. *Mayor & City Council of Baltimore v. Lambert*, 265 Md. App. 405, 418 (2025) (citing *Tanis v. Crocker*, 110 Md. App. 559, 573 (1996)) (further citations omitted).

“We review the trial court’s ruling on a motion to quash subpoenas under an abuse of discretion standard.” *Floyd v. Balt. City Council*, 241 Md. App. 199, 207 (2019) (citations omitted). An abuse of discretion arises when “no reasonable person would take the view adopted by the [trial] court or when the court acts without reference to any guiding

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<sup>8</sup> Mother also asserts that she had a right to challenge or support the reliability of the Report through analysis of the records and testimony regarding both forensic interviews as a public record exception to the rule against hearsay. *See* Md. Rule 5-803(b)(8)(A). As Mother notes, this argument was not preserved below. The rules of preservation are meant “to ensure fairness for all parties in a case and to promote the orderly administration of law.” *See State v. Bell*, 334 Md. 178, 189 (1994) (quoting *Brice v. State*, 254 Md. 655, 661 (1969)) (further citation omitted). We see no justification to subvert these rules in this circumstance; thus, we do not review this assertion. *See* Md. Rule 8-131(a). We do note, however, that the existence of this exception to hearsay—excepting reports from the Department in “final protective order hearing[s] . . . provided that the parties have had a fair opportunity to review the report”—underscores the Rules Committee’s perspective on the evidentiary difference between the Report and the underlying information relied upon to create the report. *See* Md. Rule 5-803(b)(8)(A).

rules or principles.” *Santo v. Santo*, 448 Md. 620, 625–26 (2016) (quoting *In re Adoption/Guardianship No. 3598*, 347 Md. 295, 312 (1997)) (internal quotation marks omitted).

When, however, a ruling “involves an interpretation and application of Maryland statutory and case law, we must determine whether the trial court’s conclusions are legally correct under a de novo standard of review.” *Floyd*, 241 Md. App. at 208 (quoting *Johnson v. Francis*, 239 Md. App. 530, 542 (2018)).

### **C. Analysis**

“[O]bjections to discovery subpoenas directed at nonparties are governed by [Maryland] Rule 2-510(f)[,]”<sup>9</sup> and under that rule, “a nonparty has access to the same arsenal of objections to a subpoena as would a party.” *Trusted Sci. & Tech., Inc. v.*

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<sup>9</sup> Maryland Rule 2-510(f) states:

A person served with a subpoena to attend a deposition may seek a protective order pursuant to Rule 2-403. If the subpoena also commands the production of documents, electronically stored information, or tangible things at the deposition, the person served or a person named or depicted in an item specified in the subpoena may seek a protective order pursuant to Rule 2-403 or may file, within ten days after service of the subpoena, an objection to production of any or all of the designated materials. The objection shall be in writing and shall state the reasons for the objection. If an objection is filed, the party serving the subpoena is not entitled to production of the materials except pursuant to an order of the court from which the subpoena was issued. At any time before or within 15 days after completion of the deposition and upon notice to the deponent, the party serving the subpoena may move for an order to compel the production.

A claim that information is privileged or subject to protection shall be supported by a description of each item that is sufficient to enable the demanding party to evaluate the claim.

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*Evancich*, 262 Md. App. 621, 650–51 (2024). In deciding whether to grant a nonparty’s motion to quash, a trial court may consider the discovery request’s undue burden, relevance, and overbreadth in relation to the sought discovery’s likely benefit. *Id.* at 651–52 (citation omitted). Additionally, if a privilege is asserted as the rationale for an objection to discovery, the nonparty “resisting discovery and . . . asserting a protective privilege bears the burden of establishing its existence and applicability.” *See E.I. du Pont Nemours & Co. v. Forma-Pack*, 351 Md. 396, 406 (1998) (citations omitted).

HS section 1-201 *et seq.* provides the state’s statutory privilege protecting certain Department records and testimony from disclosure. HS section 1-201(a) dictates that “a person may not disclose any information concerning an applicant for or recipient of . . . child welfare services . . . that is directly or indirectly derived from the records, investigations, or communications of the State[.]” This section *allows* disclosure of such evidence in accordance with a court order. *See* HS § 1-201(b)(1).

HS section 1-202(a) provides that “a person may not disclose a report or record concerning child abuse or neglect.”<sup>10</sup> Despite this, the section *requires* disclosure of a report or record concerning child abuse if required by a court order. *See id.* at § 1-202(b)(1).

In contrast, HS sections 1-202(c)(1), (c)(1)(iv)–(vi) *allows* disclosure upon request to:

- (iv) a person who is the alleged abuser or neglecter, if that person is responsible for the child’s welfare and provisions are made for the protection of the identity of the reporter or any other person whose life or safety is likely to be endangered by disclosing the information;

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<sup>10</sup> HS section 1-202(a) provides exceptions to this privilege under “Title 5, Subtitles 7 and 12 of the Family Law Article, § 1-203 of this subtitle,” as well as sections 1-202(b)–(e). We examine potentially applicable exceptions *infra*.

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(vi) a parent or other person who has permanent or temporary care and custody of the child, if provisions are made for the protection of the identity of the reporter or any other person whose life or safety is likely to be endangered by disclosing the information[.]

*See also Freed v. Worcester Cnty. Dep't of Social Servs.*, 69 Md. App. 447, 454–55 (1986)

(“The power conferred upon a court to order disclosure is not a broad grant of authority to emasculate the protective provisions of the statutes. Rather, it is a recognition that when the information is relevant to some other purpose, such as adoption, custody, guardianship, and visitation, the court *may* require the agency to disclose the protested matter.” (Emphasis added).)

Additionally, the Department must deny a request for disclosure of information or records for a client receiving services from any of the following Department programs: Social Services, Family Investment, Purchase of Child Care, Community Services, Child Support Enforcement, and Medical Assistance. COMAR 07.01.07.04. In that event, if a subpoena is served that contains requests for records or testimony which are privileged, and the court denies the Department’s motion to quash, the Department must “[s]pecifically request that only a summary, which shall exclude the identity of the reporter of any allegation of child abuse or neglect, of the information contained in the record be disclosed.” COMAR 07.01.02.06. Separately, the Department is required to complete a written report of its investigations, detailing the case’s disposition and any necessary services; in addition, the Department must provide the report to the State’s Attorney’s Office within five business days of completion. COMAR 07.02.07.13.

As Mother correctly notes, the Department bore the burden of establishing that the requested documents and testimony were protected, which they did by relying on HS section 1-201 *et seq.* The records sought by the subpoena fall under the protection provided by HS section 1-202(a) because they are records concerning alleged child abuse.<sup>11</sup> *See State v. Runge*, 317 Md. 613, 617–20 (1989) (determining that department of social services’ records relating to an investigation into child abuse were protected from discovery under HS section 1-202(a)’s predecessor statute, Maryland Code, Article 88A section 6(b) (1957, Repl. Vol. 1985), which is substantively equivalent to HS section 1-202(a)). Likewise, the testimony sought by the subpoena falls under the protection provided by HS section 1-201(a) because it is testimony concerning child welfare services derived from an investigation by the Department, an agent of the State.

Even though Mother requested disclosure of such protected information, disclosure is discretionary under HS sections 1-201(b) and 1-202(c)(1)(iv)–(vi). *See Freed*, 69 Md. App. at 454–55 (recognizing that disclosure is discretionary under the statute because “[w]ere we to allow a court to order disclosure merely upon demand . . . the nondisclosure statutes would be severely eroded, if not effectively eliminated”); *Forensic Advisors, Inc. v. Matrixx Initiatives, Inc.*, 170 Md. App. 520, 531–32 (2006). We therefore turn to whether

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<sup>11</sup> This, in itself, demonstrates good cause for a motion to quash. As discussed *supra*, the remaining question then becomes whether discretionary disclosure should have occurred in this matter. *See Freed*, 69 Md. App. at 454–55. Mother’s reliance on *Tanis v. Crocker*, asserting that a motion to quash requires the proponent to show that the order is “needed to protect the Department from annoyance, embarrassment, oppression, or undue burden or cost[,]” incorrectly conflates the good cause requirement for a motion to quash a subpoena seeking unprotected information with the Department’s motion *sub judice*, which sought to protect statutorily protected information. *See Tanis*, 110 Md. App. at 576.

the court abused its discretion in denying issuing an order of disclosure of the privileged information.

In granting the motion to quash, the court wrote that “[t]he information requested is confidential and protected from disclosure by [HS section] 1-201 *et. seq.*” As noted above, that conclusion is correct. The court’s order additionally notes that the decision to grant the motion was made “[u]pon consideration of the [m]otion to [q]uash filed herein by the Department and any responses thereto[.]” The Department’s motion asserted that “disclosure of records regarding confidential child welfare proceedings violates the privacy interests of individuals who may have shared highly personal information with the Department with the expectation of strict confidentiality.” The motion also noted that the Department was not a party in this case; thus, requiring it to comply with the subpoena would be prejudicial and burdensome, and “the request for any documents related to the report would be duplicative of what is already in the report” and “not in the interests of judicial economy.”<sup>12</sup> In response, Mother argued that the motion to quash should be denied because: 1) disclosure is permitted if the proper protections are in place; 2) there was no best interest attorney appointed to make recommendations to the court; 3) the full information was “vital” in order for the court could “make an informed decision about the

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<sup>12</sup> The Department also averred that “[d]ue to the confidential nature of the requested records, entry of a court order authorizing the disclosure of such records is a prerequisite for issuing a subpoena[.]” which was not done and thus the subpoena itself was procedurally improper. We note that HS section 1-201 *et seq.* does not provide a timeline as to when the court order for disclosure must be filed in relation to the subpoena. Regardless, the remaining arguments by the Department are dispositive, and there is no evidence that the court relied solely on this assertion, so we need not address this contention further.

safety and wellbeing of the child”; 4) Mother had a due process right to have meaningful access to the documents because they are judicial records; and 5) the Report was an insufficient summary of the investigation.

Under the abuse of discretion standard, we do not disturb the trial court’s decision unless “no reasonable person would take the view adopted by the [circuit] court or when the court acts without reference to any guiding rules or principles.” *Santo*, 448 Md. at 625 (citation and internal quotation marks omitted). Here, the considerations argued sufficiently address the applicable considerations in these types of judicial decisions: the discovery request’s undue burden, relevance, and overbreadth in relation to the sought discovery’s likely benefit. *See Evancich*, 262 Md. App. at 651. We conclude that it cannot be said that “no reasonable person” would conduct such a balancing test and come out in favor of the Department, as the court did. *See Santo*, 448 Md. at 625.

Notably, the Report was six pages in length and provided substantial detail on the investigation and findings—including descriptions of all conversations with both parties, Child, and the Child’s therapist, as well as direct quotations from the forensic interview, of which the subpoena sought to obtain video footage. Thus, the Department’s argument that complying with the request would be duplicative holds weight. Additionally, despite competing assertions regarding the undue burden presented by the subpoena, it is not unreasonable for the court to have weighed those claims in favor of the Department. Finally, the Department’s claims regarding the impact on privacy and trust in its investigations were circumstances that would reasonably be weighed in the court’s

balancing of factors. *See Runge*, 317 Md. at 617 (indicating that the Department may share information relating to reports concerning child abuse in limited circumstances).

As to Mother’s claim that she had a due process right to the disclosure of the sought records and testimony, such an assertion is misplaced. In *Denningham v. Denningham*, relied on by Mother, we held that “[a]bsent consent or waiver, it is error for a court to admit and consider a custody investigation report without affording the parties an opportunity to read and challenge it.” 49 Md. App. 328, 336 (1981). While *Denningham* addresses similar issues, it is inapposite here as the report at issue in *Denningham* was only viewed by the judge, not the challenging party. *Id.* at 331–32. In contrast, here, both parties were given the opportunity to review the Report, and the court did not consider the records or testimony sought by the subpoena in making its decision; thus, the due process concerns at issue in *Denningham* are not present here. *See id.*

Likewise, *Sumpter v. Sumpter*, 436 Md. 74 (2013), relied upon by Mother, does not provide a basis for Mother’s due process argument. In *Sumpter*, the Supreme Court of Maryland held that the trial court abused its discretion at a child custody hearing by refusing to provide the mother with a copy of the child custody investigation report prepared by court personnel because of “misapprehension” of a court policy as a hard-and-fast rule. *See id.* at 86–87 (determining that the trial court abused its discretion in using a policy to “govern its ruling” instead of using its inherent discretion). The *Sumpter* court declined review of the constitutional due process claims raised by the mother, and instead the case turned on the specific court policy as applied—inapplicable here. *See id.* at 91–92 (“In other circumstances, we might inquire as to [the mother’s due process claims] . . . [but]

we decide the case on . . . [non]constitutional grounds[.]”). We recognize that while Mother may have had a due process right to review the Report itself, that was provided here. *See Denningham*, 49 Md. App. at 337 (“However sensitive the material may be, a party has a right to know what evidence is being considered by the court in judging his cause.”). That right does not extend to information not presented to or considered by the court. *See id.*

Therefore, the trial court did not abuse its discretion in granting the motion to quash nor in the resulting denial of the final protective order.

## **II. THE CIRCUIT COURT DID NOT ERR IN LIMITING DR. CHAMPION’S TESTIMONY BECAUSE OF PATIENT-THERAPIST PRIVILEGE.**

### **A. Party Contentions**

Mother contends that the circuit court erred in limiting Dr. Champion’s testimony and hence, it flows that she contends that limitation led to error in the court’s denial of the final protective order. Mother asserts that Dr. Champion’s testimony should not have been limited due to privilege because Child was not a “patient” under the statute; thus, the patient-therapist privilege did not apply. Additionally, Mother posits that any privileged relationship would have been destroyed because the communications between Child and Dr. Champion were not meant to be confidential, or because Child disclosed the alleged sexual abuse to a mandatory reporter. Again, we note that Father did not file a brief in this appeal.

### **B. Standard of Review**

“In Maryland, any party resisting discovery by asserting a privilege ‘bears the burden of establishing its existence and applicability’ and must ‘substantiate its non-

discovery’ by a preponderance of the evidence.” *State v. Sewell*, 463 Md. 291, 305–06 (2019) (quoting *Forma-Pack*, 351 Md. at 406, 409 (1998)).

Review of such a showing is a question of law. *McCormack v. Bd. of Educ. of Balt. Cnty.*, 158 Md. App. 292, 302 (2004). Because the circuit court’s ruling that the patient-therapist privilege barred Dr. Champion’s testimony regarding her conversation with Child was a conclusion of law, “specifically its interpretation of section 9-109(c), we shall review that decision *de novo*.” *Id.*

### **C. Analysis**

In 1966, the first nondisclosure privilege between patient and therapist was enacted in Maryland. *Nagle v. Hooks*, 296 Md. 123, 126 (1983). This subsequently became codified in Maryland Code, (1974, 2020 Repl. Vol.) section 9-109 of the Courts and Judicial Proceedings Article (“CJP”), with one notable change between the 1966 legislation and the current privilege:

In the original 1966 legislation, it was specifically provided that disclosure could be compelled by a judge “in cases involving the custody of children if, in the judge’s opinion, such disclosure was necessary to a proper determination of the issue of custody.” That provision was eliminated by the legislature in 1977 (Ch. 685, Laws of 1977) for some unexplained reason, and is thus not the law today.

*Id.* at 126–27 (brackets omitted).

As the privilege exists today, “[u]nless otherwise provided, in all judicial, legislative, or administrative proceedings, a patient or his authorized representative has a privilege to refuse to disclose, and to prevent a witness from disclosing, communications relating to diagnosis or treatment of the patient’s mental or emotional disorder.” *See*

*Kovacs v. Kovacs*, 98 Md. App. 289, 307 (1993) (quoting CJP 9-109(b)). As with all statutory interpretation, we first look to the plain meaning of the language in the statute. See *Dep’t of Hum. Res., Balt. City Dep’t of Soc. Servs. v. Hayward*, 426 Md. 638, 650 (2012) (“[I]f the words of the statute, construed according to their common and everyday meaning, are clear and unambiguous and express a plain meaning, we will give effect to the statute as it is written.”) (quoting *Jones v. State*, 336 Md. 255, 261 (1994)).

Under CJP § 9-109(a)(4), a “patient” is “a person who communicates or receives services regarding the diagnosis or treatment of his mental or emotional disorder from a psychiatrist, licensed psychologist, or any other person participating directly or . . . in consultation with or under direct supervision of a psychiatrist or psychologist.”<sup>13</sup> See *Bryant v. State*, 393 Md. 196, 206 (2006) (quoting CJP § 9-109(a)(3)). Mother asserts that Child was not Dr. Champion’s “patient” under this definition because the forensic interview was not a service “regarding the diagnosis or treatment of his mental or emotional disorder[.]” See *id.* Thus, “[o]ur inquiry focuses on the purpose of the communication: [Was] the exchange between [client] and [provider] ‘regarding diagnosis or treatment?’” *Id.* The statute itself gives no further definition of “diagnosis” or “treatment” to provide clarification on Child’s status as a patient, hence we look elsewhere for guidance.

“The absence of an express definition of a term . . . does not preclude us from construing its plain meaning.” *Schreyer v. Chaplain*, 416 Md. 94, 101 (2010) (quoting *Crofton Convalescent Ctr., Inc. v. Dep’t of Health & Mental Hygiene*, 413 Md. 201, 217

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<sup>13</sup> Dr. Champion is a licensed psychologist.

(2010)). We can, and frequently do, consult dictionaries to ascertain the plain meaning of terms not defined by statute. *Id.* (citing *Maryland-National Cap. Park & Plan. Comm’n v. Anderson*, 164 Md. App. 540, 579 (2005)). In a recent concurrence, Justice Booth examined the following dictionary definitions for the term “diagnosis”:

According to Black’s Law Dictionary, “diagnosis” means “[t]he determination of a medical condition (such as a disease) by physical examination or by study of its symptoms.” (11th ed. 2019). Merriam Webster’s Dictionary includes in its definition of “diagnosis” the “investigation or analysis of the cause or nature of a condition, situation, or problem” and “a statement or conclusion from such an analysis.”

*Canton Harbor Healthcare Ctr., Inc. v. Robinson*, 492 Md. 1, 79 (2025) (Booth, J., concurring) (citations omitted). In *Beeman v. Dep’t of Health & Mental Hygiene*, we noted that in the relevant mental disorder statute in that case, “treatment” was “any professional care or attention” given to “improve or prevent the worsening of” a condition. 105 Md. App. 147, 161 (1995).

These definitions are substantively consistent with CJP § 9-109 precedent. In *Kovacs v. Kovacs*, we held that the evidence tended to indicate that the clients were not patients of the psychologist, where their communications were clearly not confidential because the provider was a direct consultant of the arbitrating body that assigned the services; the communications surrounded custody and familial issues; and the client received mental health counseling elsewhere. 98 Md. App. at 308–09. Because the provider “acted as a consultant” to the arbitrating body, and “not as a treating doctor for the mental or emotional problems” of the clients, the clients were not patients pursuant to CJP section 9-109. *Id.* at 309.

Likewise, in *Bryant*, the Supreme Court of Maryland held that inmates did not have a patient-therapist relationship with the intake personnel who conducted their initial health screenings at a prison given that: 1) the intake was conducted with “every inmate without regard to their actual medical or mental need”; 2) the intake did “not require that the person doing the intake screening be a mental healthcare provider or be associated with any psychiatrist or psychologist”; 3) “the intake follows a specific form designed to determine any possible concerns about the inmate”; and 4) “the screening is designed to prevent newly arrived inmates who pose a threat to their own or others’ health or safety from being admitted to the facility’s general population[.]” 393 Md. at 209 (emphasis omitted). Moreover, the Court noted that the “primary purpose of the screening is to protect not only the individual inmate but the general population from the inmates’ possible physical and mental issues and not for diagnosis or treatment of the inmates.” 393 Md. at 209. Therefore, given that the intake personnel were not working with the purpose to provide a solution or analysis of a medical problem or condition, and the evaluation was given to all inmates regardless of their needs, the inmates were not patients of the intake personnel pursuant to CJP section 9-109. *Id.* at 214–15.

In both *Kovacs* and *Bryant*, to create a patient-therapist relationship, “treatment” and “diagnosis” require the provider to “improv[e,]” “prevent[] the worsening of[,]” “investigat[e,] or analy[ze] . . . a condition, situation[,] or problem[.]” *See Kovacs*, 98 Md. App. at 309; *Bryant*, 393 Md. 196 at 209, 214–15. *Accord Beeman*, 105 Md. App. at 161; *Robinson*, 492 Md. at 79 (Booth, J., concurring). Applying this definition here, the facts in *Bryant* and *Kovacs* are distinguishable from the facts *sub judice*.

In *Kovacs*, the communications were clearly not confidential because the provider was sent by the arbitrating body, and the clients discussed custody and family issues with the provider, rather than their mental and emotional well-being. 98 Md. App. at 308–09. Here, Dr. Champion was a therapist provided to Child by his mother, and Dr. Champion and Child discussed Child’s emotional and mental well-being, as well as Child’s relationships with loved ones. Although Child was also receiving additional mental health treatment with Child’s previous therapist, Child discussed the same topics with Dr. Champion as Child discussed with his previous therapist. Given the similarities between the circumstances of Child’s regular therapy and Child’s communications with Dr. Champion—particularly given that Dr. Champion did not inform Child of the confidentiality of their discussions—it is unlikely that Child would have known their discussions were not confidential, unlike the clients in *Kovacs*. *See id.* (indicating that it was “clear” that the communications between the children and the providers were not confidential). Additionally, unlike in *Bryant*, where the purpose of the communication between inmate and provider was to protect the individual inmate and the general population of the prison, the purpose of Dr. Champion’s communication with Child was to determine Child’s well-being and whether sexual assault had occurred. *Bryant*, 393 Md. at 209.

Therefore, Dr. Champion’s forensic interview with Child—which was aimed at providing an analysis of Child’s wellbeing and whether Child had been abused by Father—was conducted under reasonably confidential circumstances and “investigat[ed,] or

analy[zed] . . . a condition, situation[,] or problem[.]” *See Kovacs*, 98 Md. App. at 308–09; *Bryant*, 393 Md. 196 at 209. *Accord. Robinson*, 492 Md. at 79 (Booth, J., concurring).

Mother is correct that, generally, privileges are to be narrowly construed; however, that “simply means that courts must not endeavor to overread its applicability and resolve ambiguities in favor of admitting evidence.” *Sewell*, 463 Md. at 305 (citation omitted). Application of the patient-therapist privilege to the forensic interview between Child and Dr. Champion does not “overread its applicability” because doing so protects exactly the communications the privilege was designed to protect—conversations that, if disclosed, would discourage clients from speaking freely and fully without fear of public disclosure. *See In re Althea W.*, 130 Md. App. 635, 641 (2000) (citing *Goldsmith v. State*, 337 Md. 112, 150 (1995) (dissenting opinion)).

Notably, Child was only five years old at the time of the proceedings. Thus, despite Mother’s contentions, Child’s presumed awareness of possible disclosure does not affect the privilege in this case. When an individual receiving a privileged communication has a legal duty to disclose, then the privilege is destroyed because individuals are “presumed to know the law[,]” and hence presumed to understand that such communications are not confidential and not protected. *Sewell*, 463 Md. at 313–14. While the presumption of knowledge is without regard to subjective understanding, it cannot be applied equally to a five-year-old as it was to an adult in *Sewell*. *See Nagle*, 296 Md. at 127 (recognizing that “[c]ertainly a minor under the age of [ten] years would be incompetent to make such a decision” regarding the waiver of a privilege). Thus, the patient-therapist privilege was not destroyed here because Child disclosed alleged sexual abuse to Dr. Champion, a mandatory

reporter. *See id.* Likewise, informing the patient that the communications will be shared does not destroy the privilege where the child is five and cannot reasonably be informed of such circumstances. *Cf. In re Alethea W.*, 130 Md. App. at 641; *see also Nagle*, 296 Md. at 127.

Therefore, applying the understanding of “diagnosis” and “treatment” made clear through precedent, Child is a patient of Dr. Champion, and the patient-therapist privilege applied to their conversations during the forensic interview and was not waived.<sup>14</sup>

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

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<sup>14</sup> While we make no such determination here, we additionally note that on these facts it is possible that a child privilege attorney appointed on behalf of the child could have waived or asserted the patient-therapist privilege prior to the court’s decision regarding Dr. Champion’s testimony. *See McCormack v. Board of Educ. of Balt. Cnty.*, 158 Md. App. 292, 307 (2004) (citing CJP §§ 9-109(b)–(c)); *Nagle*, 296 Md. at 128. However, no such appointment was requested and hence the issue is not before us on appeal. Regardless, the child privilege attorney requirement regarding privileged information exemplifies further the weight our precedent places upon protecting a child’s communications with mental health providers and the issues associated with the inability of a child to give informed consent sufficient for waiver or the child’s ability to understand the law. *Id.*