

Circuit Court for Baltimore County
Case No. C-03-FM-25-812351

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 2467

September Term, 2025

MARC RICHARD ROCQUE

v.

STEPHANIE LYNN ROCQUE

Zic,
Kehoe, S.,
Eyler, James R.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Kehoe, J.

Filed: July 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 persuasive value only if the citation conforms to Maryland Rule 1-104(a)(2)(B).

In June of 2025, Appellant, Marc Richard Rocque (“Mr. Rocque”), and Appellee, Stephanie Lynn Rocque (“Ms. Rocque”), filed for divorce and custody of their minor child in Circuit Court for Baltimore County. On October 26, 2025, Ms. Rocque filed a Petition for Protection of the parties’ minor child from Mr. Rocque, alleging sexual abuse of the child. Following three days of trial, on December 29, 2025, the Circuit Court for Baltimore County granted the Final Protective Order against Mr. Rocque based on a finding of statutory physical abuse of a child and assault in any degree. Mr. Rocque filed a timely appeal and presents the following questions, which we have slightly revised, for this Court’s review:¹

- 1) Does the upcoming expiration of the Final Protective Order render this appeal moot?
- 2) Did the circuit court err in granting a Final Protective Order based on physical child abuse and assault in any degree?

¹ Mr. Rocque presented the following questions for our review:

- 1) Does the upcoming expiration of the Final Protective Order render this appeal moot?
- 2) Was the evidence legally sufficient to support the finding of child physical abuse, where the Trial Court did not find injury and intentional harm and did not analyze whether the conduct was reckless under [Family Law Article] § 4-501?
- 3) Did the Trial Court err in granting a final protective order based on assault in any degree without making findings on harmful and/or offensive contact and lack of legal justification in the context of parental hygiene care?

We answer the first question in the negative and therefore consider the second the question, which we answer in the affirmative. For the reasons stated herein, we reverse the judgment of the circuit court.

I. FACTUAL & PROCEDURAL BACKGROUND

To provide some context, we will take judicial notice of allegations set forth in the pleadings in the Rocques’ divorce proceeding. *See In the Matter of AutoFlex Fleet, Inc.*, 261 Md. App. 627, 683–84 (2024). The parties were married on November 30, 2015, and share one child together (hereinafter, the “Child”), born in August of 2020. Ms. Rocque filed a Complaint for Absolute Divorce on June 12, 2025, seeking primary physical and sole legal custody of the Child, in addition to a divorce and other relief. Mr. Rocque filed a Counter-Complaint for Absolute Divorce, Custody and Other Relief on June 27, 2025, seeking shared physical and joint legal custody of the Child. At the time of this appeal, a hearing on the merits is pending.

Shortly after the parties filed for divorce, on June 30, 2025, Ms. Rocque filed a petition for a protective order against Mr. Rocque, after a dispute over access to the Child led to an altercation. On July 18, 2025, a Final Protective Order was entered, prohibiting Mr. Rocque from contacting Ms. Rocque, “except to facilitate any child visitation[.]” The protective order also awarded custody of the Child to Ms. Rocque for the duration of the order, and awarded Mr. Rocque visitation with the Child every Saturday and Sunday from 8:30 a.m. to 6:30 p.m. and video calls every Tuesday at 4:30 p.m. Prior to the protective order, Mr. Rocque had liberal access to the Child with overnight visitation.

A. Petition for Protection from Child Abuse

On October 26, 2025, Ms. Rocque filed a Petition for Protection from Child Abuse on behalf of the Child against Mr. Rocque. In the petition, Ms. Rocque alleged that, on or about October 19, 2025 and October 25, 2025, Mr. Rocque committed acts of abuse against the Child, to wit: sexual offense and mental injury. Ms. Rocque further explained in the petition that:

[The Child] disclosed that someone put a finger in her vagina and said that it hurt a lot and that her dad was changing her. I took her to [the Greater Baltimore Medical Center (“GBMC”) Emergency Room (“ER”)] and Harford Co. Sheriffs were called. She was visiting her dad [from] 0830 – 1830 [hours]. It was during his visitation time.

I picked [the Child] up from daytime visitation with her dad a little before 6:30 p.m. on 10/25. Shortly after we got home[,] she pooped in her pull up. She has been having severe constipation issues and is back in pull ups to try to make her more comfortable to poop. She has been very worried for a week since her last visit on 10/19 about cleaning poop around her vagina and asked me if I had to “put a finger in there?” I said no and asked why but she didn’t want to talk. We cleaned up in the tub all week per her request and comfort at not wanting to be wiped. She gave no further details, just panic at being wiped which was new with me. I dropped her off 10/25 at 8:30 a.m. for her visit with her dad as stipulated in the other protective order against [Mr. Rocque] that I filed for us both on 6/30/2025. I picked her up a little before 6:30 p.m. on 10/25 and we went home. Shortly thereafter she pooped in her pull up and immediately panicked about any poop being in her vagina. I said she could get in the tub again like before if there was. She asked again about her vagina and if I “had to go in.” I said no and asked what she meant by “in” inside or just a wipe? She said inside. I asked if that had ever happened and she said yes and it “hurt a lot.” I asked what was happening and when[,] and she said her dad was cleaning her today. I took her to the ER where a report was made and she told ER staff what happened.

At GBMC ER[,] the [doctor] asked [the Child] if she knew why she was there and she said yes, her daddy touched her vagina.

As indicated in the petition, Ms. Rocque took the Child to GMBC on October 25, 2026, following the Child's disclosure to her of possible sexual abuse. GMBC conducted an exam and contacted the Harford County Sheriff's Office. GMBC medical records reflect that the Child "disclosed during triage that she was scared and her 'vagina hurt' and 'dad touched her there.'" Ms. Rocque was advised to seek a protective order on behalf of the Child against Mr. Rocque, which she did the following day.

The Petition for Protection was filed in the District Court for Harford County. The Commissioner granted an Interim Protective Order and scheduled a Temporary Protective Order hearing before the District Court judge. On October 28, 2025, the District Court for Harford County granted a Temporary Protective Order, by consent of Mr. Rocque without admitting the allegations in the petition or a judicial finding of abuse. Ms. Rocque was awarded custody of the Child pending the outcome of the Final Protective Order hearing. The case was transferred to the Circuit Court for Baltimore County for the Final Protective Order hearing, due to the parties' pending divorce proceeding there.²

As a result of the reported child sexual abuse, a referral was made to the Harford County Department of Social Services (hereinafter, the "Department"). As part of its investigation, the Department conducted a forensic interview with the Child on October 29, 2025. As a result of that interview, the Department noted in their report that "[t]here was no sexual abuse disclosure. [The Child] was able to identify all the places on her body.

² The matter was mistakenly transferred to the Circuit Court for Harford County before being correctly transferred to the Circuit Court for Baltimore County.

She denied anyone, including her father, Mr. Rocque touching her inappropriately.” The Department conducted home visits at each parent’s residence on November 10, 2025 and noted nothing of concern at either home in their report.

The Department made a finding, based on the reported information and investigation, that sexual abuse was “Ruled Out,” finding that Mr. Rocque was not responsible for “indicated or unsubstantiated child abuse or neglect[.]” Upon the finding that sexual abuse was ruled out, the Department closed the investigation.

B. Final Protective Order Hearing

The Final Protective Order hearing was conducted over the course of three days—November 24, December 5, and December 29 of 2025.³ On the last day of trial, the court orated its ruling, which began with a summary of the testimony of the witnesses and evidence presented. Ms. Rocque “testified to all of the reasons that she is concerned. [Mr. Rocque] denied everything alleging that [Ms. Rocque] is making up the allegations to cut

³ The first scheduled hearing for the Final Protective Order on November 4, 2025 was postponed for the Department to complete its investigation and submit a full report. The Temporary Protective Order was extended and granted Mr. Rocque video calls with the Child.

The second scheduled hearing on November 14, 2025 was postponed at the request of Ms. Rocque for the purpose of providing the court with a memorandum regarding the admissibility of the Child’s Nurse Practitioner’s testimony as it related to the Child’s disclosure to her. Also at the November 14 hearing, the court appointed the Child’s best interest attorney (“BIA”) from the pending custody case to this matter. The Temporary Protective Order was extended again, and Mr. Rocque was granted line of sight supervised visitation with the Child on the following Saturday and Sunday from 1:00 p.m. to 5:00 p.m.

him out of his daughter's life." The court found both Ms. Rocque and Mr. Rocque "equally credible" in their testimony and therefore, the court "look[ed] to the collateral witnesses."

Nurse Practitioner Abigail Adams ("Ms. Adams"), who has been the Child's health care provider since birth and is familiar with both parties, testified that the Child began having constipation issues at two years of age when the parties began to potty train her; however, when the parties stopped the potty training, the constipation issues also ceased. The Child began having constipation issues again at four years of age. Ms. Adams testified as to how those issues were treated, which included her recommendation that the Child use pull ups, as she was comfortable stooling in them, as well as the use of laxatives and enemas.

The court highlighted that Ms. Adams testified credibly to the Child's behavior and change in behavior when the parties separated—that the Child went from being a bubbly, happy child to a child who clings to her mother. However, most of the behavior Ms. Adams testified to came directly from Ms. Rocque—the Child's nightmares, crossing of the legs, stiffening up, and going into a corner to stool in her pull up. The court stated that "Ms. Adams clearly believes Ms. Rocque's account of what has been occurring out of her presence."

Ms. Adams further testified that, at the Child's appointment on November 8, 2025, the Child advised her that she was not comfortable stooling at her father's house and that she holds her stool in because she is scared. However, the Child would not say more or anything specific as to why she was scared. The Child also advised Ms. Adams that it hurts

when someone goes into her vagina. When Ms. Adams asked the Child directly, “who goes into your vagina,” the Child said, just “me” referring to herself and began to act silly. The court also noted that “Ms. Adams believes that something was going on[;]” however, “[s]he is not sure what it is.”

Mollie Shrader (“Ms. Shrader”) from the Department testified as to her investigation of the allegations that Mr. Rocque inserted his fingers into the Child’s vagina. During Ms. Shrader’s testimony, the audio and video footage of the forensic interview of the Child was played. The court summarized the contents of the forensic interview, indicating that the Child “specifically said that no one touched her where she goes to the bathroom.” When asked about the Child’s recent hospital visit, the Child advised that she went to the hospital “to get the poopies out.” The Child also denied telling anyone at the hospital that someone touched her vagina. There was no disclosure during the forensic interview that anyone had touched the Child’s vagina. The court noted that “Ms. Shrader also believed something happened, but she can’t be sure what it is. She did rule out abuse because she didn’t find a disclosure and to her[,] there did not appear to be any fear of Mr. Rocque.”

Nurse Shannon Ryan (“Ms. Ryan”), from GBMC, testified that, while sitting alone in the ER room with the Child on October 25, 2025, the Child, unprovoked, told Ms. Ryan that “her vagina hurt and that her dad touched her down there, pointing to her vagina.” However, when the Child was asked later about her level of pain, she indicated that she was not in any pain. The court noted that Ms. Ryan was the “one person to whom a clear statement was made by [the Child.]”

Dr. Kelly Champion (“Dr. Champion”), who was accepted as an expert witness in the field of clinical and forensic psychology, child abuse, and forensic interviewing, testified that the forensic interview conducted by Ms. Shrader was inadequate to elicit a disclosure from the Child. Dr. Champion disagreed with the Department’s conclusion to rule out child abuse. However, the court noted that Dr. Champion did not have any other independent information about the rest of the Department’s investigation. The court found Dr. Champion’s testimony interesting, that 40% of children do not disclose their abuse during forensic interviews.

Dr. Rebecca Lindsey (“Dr. Lindsey”), a family friend to both Ms. Rocque and Mr. Rocque, testified as a witness for Mr. Rocque.⁴ When Mr. Rocque left the marital home in spring of 2025, he resided at Dr. Lindsey’s home for a few months. When the Child had visitation with Mr. Rocque, Dr. Lindsey had the opportunity to observe Mr. Rocque with the Child. Dr. Lindsey opined that she did not have any concerns for the Child’s safety in Mr. Rocque’s care. Dr. Lindsey once observed Mr. Rocque change and clean the Child after a bowel movement and advised “there was nothing awkward or unusual about it.”

After summarizing the testimony and evidence, the court concluded that Ms. Rocque had met her burden and granted the Final Protective Order. The court further articulated its findings:

I do find by a preponderance of the evidence to believe the Respondent committed the following acts of abuse. I do find it to be statutory abuse of a

⁴ Dr. Lindsey has a doctorate in Administration and Special Education from Johns Hopkins University. However, Dr. Lindsey was not offered as an expert witness and only testified as a fact witness.

child, physical. I do find that based upon the statements that [the Child] has made to other people that that is the correct finding in this matter. The description of the harm is that the minor child disclosed to a healthcare provider that her vagina hurt and her father touched her down there.

I do not find, just so that it is clear, that this was done in conjunction with -- strike that. I am aware that there were issues regarding the cleaning of [the Child] when she goes to the bathroom. There was no indication this was done in conjunction with that.

The order was granted for six months, expiring on June 29, 2026, with the expectation that a pendente lite hearing in the custody matter would be heard by then.

While the court explicitly found that Mr. Rocque committed physical child abuse, the court was asked for clarification as to its findings with respect to child sex abuse, and the following dialogue ensued:

[RESPONDENT'S COUNSEL]: Not that you missed. I'm a little bit confused because you said you [] did not make a finding of sexual child abuse, but you said he committed the following acts of abuse and then you stopped. I wasn't following.

THE COURT: Quite candidly something happened and I do find that what her statement was, but I don't know that it was sexual in nature and that was the reason why I was hesitant to say it was a sexual child abuse.

[RESPONDENT'S COUNSEL]: Are we talking about you are saying it was an assault?

THE COURT: It is an assault. [. . .] That was the reason why I found it to be physical child abuse because I think it was an assault.

[PETITIONER'S COUNSEL]: Did you also say the fear of imminent harm?

THE COURT: I didn't, because I don't necessarily know that that is accurate. I think whatever happened is what upset her and I did find that her behavior has changed, which is why I found there to be an assault and a physical child abuse.

In the Final Protective Order, custody was awarded to Ms. Rocque for the duration of the order. Mr. Rocque was awarded supervised visitation and video calls with the Child. On January 21, 2026, Mr. Rocque filed a notice of appeal challenging the court's findings and the order.

Additional facts will be included in the discussion as they become relevant.

II. DISCUSSION

First, we conclude that the expiration of the Final Protective Order does not render this appeal moot due to the order's collateral consequences. Secondly, we conclude that the circuit court erred in finding physical child abuse and assault in any degree, where there was insufficient evidence to find Mr. Rocque acted with intent to harm or recklessness with regard to the Child's welfare, and where the court failed to consider a legal justification for the contact. While we reverse the circuit court's judgment, we would like to commend the court for its assiduous handling of such a sensitive and difficult matter.

A. The Expiration of the Final Protective Order Does Not Render this Appeal Moot Due to the Order's Collateral Consequences

Mr. Rocque argues that the upcoming expiration of the Final Protective Order does not render this appeal moot, as the collateral consequences of the order extend beyond its expiration date. The judicial finding of physical child abuse is reflected in publicly accessible court records and would likely influence the parties' pending custody matter, according to Mr. Rocque. Ms. Rocque counterargues that the expiration of the Final Protective Order renders this appeal moot because, upon expiration of the order, there will

no longer be an existing controversy between the parties and the matter is not of important public concern.

“Generally, a case is moot if at the time it is before the court there is no longer an existing controversy between the parties and the court cannot provide an effective remedy.” *Piper v. Layman*, 125 Md. App. 745, 749 (1999) (citing *Robinson v. Lee*, 317 Md. 371, 375 (1989)). We typically dismiss moot cases without deciding the merits of the controversy. *Id.* (quoting *Coburn v. Coburn*, 342 Md. 244, 250 (1996)). In the present case, the protective order was granted for six months, with an expiration date of June 29, 2026. By the time this Court issues its opinion, the protective order will have expired, thereby rendering this appeal moot. *See id.* at 748–49; *Coburn*, 342 Md. at 250.

However, we may consider the merits of a moot case “if we are convinced that the case presents unresolved issues in matters of important public concern that, if decided, will establish a rule for future conduct.” *Coburn*, 342 Md. at 250. Moreover, if “the matter involved is likely to recur frequently and the same difficulty which prevented the appeal at hand from being heard in time is likely again to prevent a decision, we would be justified in deciding a moot issue.” *Id.* (quoting *Lloyd v. Supervisors of Elections*, 206 Md. 36, 43 (1954)) (internal quotation marks omitted). In *Coburn*, an appeal from the issuance of a domestic violence protective order, our Supreme Court addressed the merits of the case despite the expiration of the protective order “because [the issue presented] is likely to recur frequently but will escape judicial review by this Court due to the limited duration of protective orders.” *Id.*

This Court in *Piper*, another appeal of a domestic violence protective order that expired prior to the Court’s decision, declined to dismiss the appeal as moot due to the “significant repercussions” and the “stigma” resulting from a judicial finding of having committed abuse under the Domestic Violence Act. 125 Md. App. at 752–53. A protective order is a permanent record of the court, which could be used against the respondent in subsequent proceedings for protective orders requested by the same petitioner. *Id.* at 752; *see also Coburn*, 342 Md. at 258 (holding that “[e]vidence of prior incidents of abuse is therefore highly relevant both in assessing whether or not to issue a protective order and in determining what type of remedies are appropriate under the circumstances”). Should Ms. Rocque file another petition for protection in the future, the finding of abuse in the present case could be used against Mr. Rocque. More imminently for Mr. Rocque, the finding of abuse will likely influence the parties’ pending custody matter.

We further articulated in *Piper* the stigma a finding of abuse holds, considering the “[h]eighted public awareness and sensitivity to the existence of domestic violence, as well as legitimate public contempt for abusers, [which] creates the potential for prejudice against a person who has unfairly or inaccurately been labeled an abuser.” 125 Md. App. at 753. Moreover, “a person applying for a job, a professional license, a government position, admission to an academic institution, or the like, may be asked about whether he or she has been the subject of an order pursuant to the Domestic Violence Act.” *Id.* As a result, we held that “such person has an interest in exoneration even if the period of the protective order has expired without incident.” *Id.* Because Mr. Rocque may face these

repercussions and stigma beyond the expiration of the protective order, Mr. Rocque has an interest in exoneration and as such, we conclude his appeal is not moot.

B. The Circuit Court Erred in Granting a Final Protective Order Based on Physical Child Abuse and Assault in Any Degree

The circuit court granted the Final Protective Order based on its finding that Mr. Rocque committed: 1) physical child abuse; and 2) assault in any degree. Mr. Rocque argues that the evidence was legally insufficient to support a finding of physical child abuse because the court did not identify: 1) a qualifying injury or substantial risk of harm; or 2) any facts supporting an intent to injure or recklessness. Mr. Rocque further argues that the court erred in finding assault in any degree because the court's reliance on speculation that "something happened" was legally insufficient to make an inference of harmful or offensive contact. Moreover, the court erred by failing to consider the Child's significant constipation, withholding issues, and personal hygiene needs as a legal justification for the parental hygiene care.

Ms. Rocque counterargues that there was evidence to support the circuit court's finding that Mr. Rocque caused physical injury to the Child and that such injury was not accidental, inadvertent, or a mistaken act. Moreover, Ms. Rocque asserts that there was sufficient evidence for the court to find mental injury, imminent fear of serious bodily injury, and sexual abuse. In Ms. Rocque's view, the court was within its discretion to draw reasonable inferences based on the totality of the circumstances that an assault was more likely than not.

1. Standard of Review

“When reviewing the issuance of a final protective order, we accept the circuit court’s findings of fact, unless they are clearly erroneous.” *C.M. v. J.M.*, 258 Md. App. 40, 58 (2023). Factual findings that are supported by any competent and material evidence are not clearly erroneous. *Anderson v. Joseph*, 200 Md. App. 240, 249 (2011). “We defer to the trial court’s credibility determinations because it has the opportunity to gauge and observe the witnesses’ behavior and testimony during the trial.” *C.M.*, 258 Md. App. at 58 (quoting *Barton v. Hirshberg*, 137 Md. App. 1, 21 (2001)) (internal quotation marks omitted). We consider the evidence in the light most favorable to the prevailing party. *Id.* “As to the ultimate conclusion, however, we must make our own independent appraisal by reviewing the law and applying it to the facts of the case.” *Piper*, 125 Md. App. at 754.

2. Petition for Relief from Abuse

Title 4, subsection 5 of the Family Law Article governs the eligibility and process of obtaining a protective order in the event of domestic violence. *See Hripunovs v. Maximova*, 263 Md. App. 244, 263 (2024). “The purpose of the domestic abuse statute is to protect and aid victims of domestic abuse by providing an immediate and effective remedy. [. . .] Thus, the primary goals of the statute are preventive, protective and remedial, not punitive.” *Coburn*, 342 Md. at 252 (internal quotation marks and citations omitted).

“A petitioner may seek relief from abuse by filing with a court, or with a commissioner [. . .], a petition that alleges abuse of any person eligible for relief by the

respondent.” Md. Code Ann., Fam. Law § 4-504(a)(1).⁵ A person eligible for relief includes, but is not limited to, “a person related to the respondent by blood, marriage, or adoption[.]” Md. Code Ann., Fam. Law § 4-501(n)(3). A petitioner may seek relief from abuse on behalf of a minor child, if the petitioner is related to the child by blood, marriage, or adoption.⁶ Md. Code Ann., Fam. Law § 4-501(p)(2)(ii). “The petitioner bears the burden of showing by clear and convincing evidence that the alleged abuse occurred.” *Barton*, 137 Md. App. at 21.

The court may grant a final protective order to protect an eligible person from abuse “if the judge finds by a preponderance of the evidence that the alleged abuse has occurred, or if the respondent consents to the entry of a protective order[.]” Md. Code Ann., Fam. Law § 4-506(c)(1)(ii). Preponderance of the evidence means “more likely than not.” *Hripunovs*, 263 Md. App. at 263 (quoting *C.M.*, 258 Md. App. at 56–57). “Abuse” under § 4-501 is defined as any of the following acts:

- (i) an act that causes serious bodily harm;
- (ii) an act that places a person eligible for relief in fear of imminent serious bodily harm;
- (iii) assault in any degree;
- (iv) rape or sexual offense under § 3-303, § 3-304, § 3-307, or § 3-308 of the Criminal Law Article or attempted rape or sexual offense in any degree;
- (v) false imprisonment;
- (vi) stalking under § 3-802 of the Criminal Law Article; or

⁵ Unless otherwise indicated, all statute citations refer to the Family Law Article of the Maryland Code.

⁶ The State’s Attorney for the county where the child resides, the Department of Social Services that has jurisdiction in the county where the child resides, or an adult who resides in the home with the child, may also seek relief from abuse on behalf of a minor child. Md. Code Ann., Fam. Law § 4-501(p)(2)(ii).

(vii) revenge porn under § 3-809 of the Criminal Law Article.

Md. Code Ann., Fam. Law § 4-501(b)(1). Furthermore, “[i]f the person for whom relief is sought is a child, ‘abuse’ may also include abuse of a child, as defined in Title 5, Subtitle 7” of the Family Law Article. Md. Code Ann., Fam. Law § 4-501(b)(2)(1).

“[Family Law] § 4-501(b) defines abuse for Title 4, Subtitle 5 of the Family Law Article, dealing with domestic violence, whereas [Family Law] § 5-701(b) defines abuse for Title 5, Subtitle 7 of the same article, dealing with child abuse.” *Charles Cnty. Dept. of Soc. Servs. v. Vann*, 382 Md. 286, 301 (2004). The definition of “abuse” under § 5-701 includes:⁷

(i) 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 by:

1. a parent;
2. a household member or family member;
3. a person who has permanent or temporary care or custody of the child;
4. a person who has responsibility for supervision of the child; or
5. a person who, because of the person’s position or occupation, exercises authority over the child;

(ii) sexual abuse of a child, whether physical injuries are sustained or not; or

(iii) labor trafficking of a child by any individual.

Md. Code Ann., Fam. Law § 5-701(b)(1). However, “abuse” under § 5-701 “does not include the physical injury of a child by accidental means.” Md. Code Ann., Fam. Law § 5-701(b)(2).

⁷ In its 2026 Regular Session, the Maryland General Assembly added “female genital mutilation, as defined in § 20-601 of the Health – General Article[,]” to the definition of “abuse” under Family Law § 5-701. *See* 2026 Md. Laws ch. 28 (effective Oct. 1, 2026).

3. Physical Child Abuse under § 5-701

Per the definition in § 5-701, physical child abuse is “the physical [. . .] injury of a child under circumstances that indicate that the child’s health or welfare is harmed or at substantial risk of being harmed[,]” but “does not include the physical injury of a child by accidental means.” Md. Code Ann., Fam. Law § 5-701(b). Child abuse under this definition requires “some actual injury or substantially probable threat to the [child’s] physical or mental welfare.” See *Kalman v. Fuste*, 207 Md. App. 389, 405 (2012).

A finding of physical child abuse also requires an intentional act that “must be shown to have been either reckless in its nature or deliberately intended to harm the child[.]” *Taylor v. Harford Cnty. Dep’t of Soc. Servs.*, 384 Md. 213, 232 (2004); see also *C.M.*, 258 Md. App. at 57 (“Both physical and mental harm must be intentional and cannot be a product of an accident. The scienter element of mental and physical injury can be met by showing a parent acted in reckless disregard for the child’s welfare.”) (internal citations omitted). Reckless is defined as “the creation of a substantial and unjustifiable risk of harm to others and by a conscious (and sometimes deliberate) disregard for or indifference to that risk[.]” *Reckless*, BLACK’S LAW DICTIONARY (12th ed. 2024); see also *C.M.*, 258 Md. App. at 57 (quoting Black’s Law Dictionary’s definition of “reckless.”).

When a parent’s conduct could benefit the child, such as with medical treatment, there must be evidence that demonstrates the parent was reckless with the child’s health to find child abuse. See *McClanahan v. Washington Cnty. Dep’t of Soc. Servs.*, 445 Md. 691,

712 (2015). “In other words, the parent’s conduct must constitute a gross departure from the type of conduct a reasonable person would engage in under the circumstances.” *Id.*

i. Analysis

To find physical child abuse, the court must find: 1) actual injury or substantial risk of harm; and 2) intent to injure or recklessness. *See* Md. Code Ann., Fam. Law § 5-701(b); *Kalman*, 207 Md. App. at 405; *Taylor*, 384 Md. at 232. Here, the court found, per the Child’s statement, that the Child’s “vagina hurt.” “[W]e accept the circuit court’s findings of fact, unless they are clearly erroneous.” *C.M.*, 258 Md. App. at 58. Because this finding is supported by evidence presented at trial, we conclude that the finding is not clearly erroneous. *See Anderson*, 200 Md. App. at 249. However, we agree with Mr. Rocque in that there is no evidence to support a finding that Mr. Rocque intended to injure or harm the Child, or that his conduct was reckless with respect to the Child’s welfare.

It is not the general intent to do the act which causes the injury, but a specific intent to injure, that is required for a finding of physical child abuse. *See Taylor*, 384 Md. at 232–33. In *Taylor v. Harford County Department of Social Services*, the father appealed the Department’s finding of indicated child abuse under § 5-701, after he kicked a stool in anger, and it accidentally struck his daughter, causing injuries requiring medical treatment. *Id.* at 215. Our Supreme Court held that child abuse cannot be found when an injury results from an accidental or unintentional act, unless the act causing the injury was done recklessly. *Id.* at 232–33. While the father intended to kick the stool, he did not intend to hit and injure his daughter. *See id.* at 230. Similarly, in the present case, while there is

evidence to support the finding that Mr. Rocque committed the alleged touching and that the Child was “hurt” by it, there is no evidence that Mr. Rocque intended to injure or harm the Child by the touching.

Conversely, there is evidence to suggest that the alleged touching is related to parental conduct which benefited the child, such as cleaning the Child after a bowel movement. *See McClanahan*, 445 Md. at 712 (holding that conduct which benefits the child, like medical treatment, cannot be abuse unless the conduct was reckless). Mr. Rocque testified that when he cleans the Child after a bowel movement, he does have to clean around the outside of the vagina due to the Child being on laxatives, which makes the stool loose, and the Child wearing pull ups, which enables the stool to spread to the vaginal area. Mr. Rocque further testified that on one of the days in question, October 19, 2025, the Child had a bowel movement and he did clean her thereafter.

The court stated that while it was “aware that there were issues regarding the cleaning of [the Child] when she goes to the bathroom[,] [t]here was no indication this was done in conjunction with that.” We disagree with the court’s finding in this regard, as there is substantial evidence to suggest that the touching was related to the Child’s bowel movements and an attempt to clean the Child thereafter. The Child’s statement made to Ms. Rocque that it hurts when someone puts their finger in her vagina was in combination with the statement that Mr. Rocque had cleaned the Child that day after a bowel movement. Moreover, the Child’s change in behavior and anxiety corresponded with her constipation, bowel movements, and being cleaned.

There was significant testimony regarding the use of enemas to treat the Child's constipation and the fear the Child had of this treatment. When asked whether the Child "freaked out" about having to receive an enema, Ms. Rocque replied "[y]es, she did. [. . .] She was scared to have an enema." Ms. Shrader testified that "the enema situation was pretty traumatizing for [the Child]" and that she "had concerns about [whether] the level of constipation [could] be playing a role in why we're here in this investigation." Therefore, in our view, the court's finding that "there was no indication" that the "hurt" the Child expressed or the touching "down there" could be related to the Child's stooling issues and hygiene care, was erroneous.

When the conduct in question "falls within the realm of conduct that could benefit the child, as medical treatment does, there must be some evidence that supports a conclusion that the parent was at least reckless vis-à-vis the child's health." *McClanahan*, 445 Md. at 712. A parent assisting in the hygiene care of their child when the child is unable to do so their self is certainly an act that benefits the child. As such, there must be evidence sufficient to find that Mr. Rocque was reckless with the Child's welfare and health. *See id.* However, we conclude that there was no evidence presented that Mr. Rocque's contact with the Child for the purpose of hygiene care was conducted with reckless disregard of the Child's welfare or health. Additionally, the court's rationale that "something happened" is insufficient to maintain a finding of physical child abuse. Due to the lack of evidence to support a finding that the harm was intentional or that Mr.

Rocque acted with reckless disregard of the Child’s welfare, we conclude that the circuit court did err in finding physical child abuse.⁸

4. Assault in Any Degree under § 4-501

“Assault” is not defined in § 4-501 or elsewhere in the statute on domestic violence. *See* Md. Code Ann., Fam. Law § 4-501 *et seq.* However, the criminal definition of assault under Criminal Law § 3-201 *et seq.* may be instructive. Pursuant to Criminal Law Article § 3-201, “assault” means “the crimes of assault, battery, and assault and battery, which retain their judicially determined meanings.” Md. Code Ann., Crim. Law § 3-201(b). There are three types of assault: intent to frighten, attempted battery, and battery. *Pryor v. State*, 195 Md. App. 311, 335 (2010).

With respect to the battery modality of assault, the most succinct definition for criminal assault comes from the Maryland Pattern Jury Instructions. Assault is “causing offensive physical contact to another person” where the perpetrator “caused offensive physical contact [or] physical harm” which was “the result of an intentional or reckless act [] and was not accidental” and such “contact was not consented to [or] not legally justified.” *Second Degree Assault*, Md. Pattern Jury Instruction, MPJI-Cr 4:01 (3d ed. 2025) (internal

⁸ Ms. Rocque continues to argue on appeal that Mr. Rocque committed “mental injury” to the Child, despite the circuit court’s rejection of such finding. Like “physical injury” under § 5-701, “mental injury” also requires an intent to injure or reckless disregard of the child’s welfare. *See McClanahan*, 445 Md. at 711 (holding that intent to harm or reckless disregard is required for both mental and physical abuse); *see also C.M.*, 258 Md. App. at 57. Moreover, for mental injury, the “parent’s action must be examined in context.” *Id.* at 705. Because we concluded that there was no evidence of intent to injure or recklessness with respect to the physical injury of the Child, similarly, there is no evidence of intent to injure or recklessness for mental injury.

brackets omitted). Intent to frighten is “intentionally frightening another person with the threat of immediate offensive physical contact [or] physical harm.” *Id.* (internal brackets omitted). In the criminal context, the “intent need only be for the touching itself; there is no requirement of intent to cause a specific injury.” *Elias v. State*, 339 Md. 169, 183 (1995) (quoting *State v. Duckett*, 306 Md. 503, 510 (1986) (superseded by statute on other grounds)).

However, because the purpose of the domestic violence statute—protective not punitive—is different from that of the criminal statute, we have defined the *mens rea* element for assault under § 4-501 differently. *See Barton*, 137 Md. App. at 22. In *Barton v. Hirshberg*, Ms. Barton appealed the denial of her request for a protective order, alleging that the Mr. Hirshberg threw their child into his car and intentionally struck her with his vehicle, causing severe bruising to her leg. *Id.* at 11. Mr. Hirshberg denied the allegations and testified that he was unaware that he hit Ms. Barton with his car. *Id.* at 11–12. The trial court found that Mr. Hirshberg did hit Ms. Barton with his car but declined to find that it was done so intentionally, and therefore Ms. Barton failed prove that Mr. Hirshberg committed an act of domestic violence.⁹ *Id.* at 15.

⁹ “With regard to the alleged abuse of [the child], the court found Hirshberg’s conduct toward [the child] to be firm, but not abusive.” *Barton*, 137 Md. App. at 15.

This Court held that these conclusions were supported by sufficient evidence and thus not clearly erroneous.¹⁰ *Id.* at 22. We rejected Ms. Barton's argument that Mr. Hirshberg acted recklessly and that regardless of his intentions, Mr. Hirshberg struck her with his car, causing serious bodily harm. *Id.* We explained that additional evidence of Mr. Hirshberg's intent or recklessness was required to grant the protective order due to the purpose of the domestic violence statute:

While in some cases reckless behavior may form the basis for a complaint of domestic violence, the overall goals of the domestic violence statute would not be served by entering a protective order under these circumstances. The purpose of the domestic abuse statute is to protect and aid victims of domestic abuse by providing an immediate and effective remedy. The primary goals of the statute are preventive, protective and remedial, not punitive. The legislature did not design the statute as punishment for past conduct; it was instead intended to prevent further harm to the victim.

There is no indication in the record that Hirshberg had acted recklessly in the past in a manner that would create danger to Barton or [the child]. Further, there is no indication that Hirshberg ever committed any intentional acts of abuse against Barton or [the child] that would require [a] protective order for protection. Under these circumstances, there is no need to protect Barton or [the child] from Hirshberg. Indeed, any protective order would act as punishment to Hirshberg for accidentally striking Barton with his car. As recognized by the Court in *Coburn*, [342 Md. 244,] punishment is not the purpose of the domestic violence statute.

Barton, 137 Md. App. at 22–23 (internal citations and quotation marks omitted). We therefore held that the trial court did not err in denying Ms. Barton's request for a protective order. *Id.*

¹⁰ Although at the time of the hearing in *Barton v. Hirshberg*, the standard of proof was clear and convincing evidence, the difference in the current standard of proof of preponderance of the evidence does not affect our analysis. 137 Md. App. at 21.

i. Analysis

Assault requires harmful or offensive physical contact, resulting from an intentional or reckless act, which is not consented to or legally justified. MPJI-Cr 4:01. Similar to our conclusion for physical child abuse, we accept the finding of the circuit court that a harmful or offensive contact occurred. The Child’s statement was “that her vagina hurt and that her dad did touch her down there.” However, pursuant to *Barton*, there must be some evidence that the contact was intended to cause harm or offend, or at least done with reckless disregard. 137 Md. App. 22–23. There was no evidence presented that Mr. Rocque intended to harm or offend the Child. Moreover, like in *Barton*, there is no indication in the record that Mr. Rocque acted recklessly with regard to the Child’s welfare. Again, the court’s rationale that “something happened” is insufficient to maintain a finding of assault under § 4-501.

Additionally, assault cannot be found where the contact was legally justified. MPJI-Cr 4:01. Mr. Roque argues that the contact was a result of parental hygiene care for the Child, and thus legally justified. There is no case law to be found regarding this specific scenario. An analogous situation is the reasonable punishment of a child by a parent, which is not prohibited under § 4-501. See Md. Code Ann., Fam. Law § 4-501(b)(2)(ii) (“Nothing in this subtitle shall be construed to prohibit reasonable punishment, including reasonable corporal punishment,^[11] in light of the age and condition of the child, from being performed

¹¹ Corporal punishment is defined as “[p]hysical punishment [or] punishment that is inflicted on the body[.]” *Corporal Punishment*, BLACK’S LAW DICTIONARY (12th ed. 2024).

by a parent or stepparent of the child.”); *see also Anderson v. State*, 61 Md. App. 439, 443 (1985) (“As a defense, by way of justification, to what would otherwise be an assault and battery, an individual *in loco parentis* may sometimes, but not always, establish that the force used upon the child was privileged as necessary and proper to the exercise of domestic authority.”).

Therefore, § 4-501 envisions situations in which a parent may exert reasonable, physical contact upon a child, even contact which may be harmful or offensive to the child, for a purpose that benefits the child’s welfare, and that such contact will not constitute assault or abuse. However, our conclusion is not to be read as allowing parents or caregivers carte blanche physical contact with a child, especially when it comes to a child’s genital area. The key is “reasonableness” of the contact. *See Anderson*, 61 Md. App. at 443 (“The parent of a minor child is justified in using a *reasonable* amount of force upon the child for the purpose of safeguarding or promoting the child’s welfare.”) (quoting W. LaFave & A. Scott, *Handbook on Criminal Law* 389–90 (1972)).

Because the court found that the contact could not have been related to the act of hygiene care, it did not consider the reasonableness of Mr. Rocque’s actions. However, we previously concluded that the court’s finding in this regard was clearly erroneous. We believe there is sufficient evidence to suggest that the touching could have been related to the act of parental hygiene care. We point out that the court found that Mr. Rocque “touched” the Child “down there” referring to the Child’s vagina; however, the court

omitted a finding that he “put his finger” in the Child’s vagina.¹² “[W]e accept the circuit court’s findings of fact, unless they are clearly erroneous.” *C.M.*, 258 Md. App. at 58. It would not be reasonable for a parent to insert their finger into a child’s vagina for hygiene cleaning.¹³ Whereas, it is not out of the realm of reasonableness for the vaginal area of the child to be touched during hygiene cleaning. While we defer to the court’s factual findings, “[a]s to the ultimate conclusion, [] we must make our own independent appraisal[.]” *Piper*, 125 Md. App. at 754.

¹² The Court explicitly rejected a finding that the contact was sexual abuse, stating “I don’t know that it was sexual in nature and that was the reason why I was hesitant to say it was a sexual child abuse.”

¹³ Nurse Practitioner, Ms. Adams, who was accepted as an expert in pediatric primary care, testified as to whether the insertion of a finger into the vagina is recommended or common during hygiene cleaning of a child:

[PETITIONER’S COUNSEL:] And in your professional experience and opinion as a pediatric nurse practitioner, general nurse practitioner, would you recommend that in order to clean a child’s vagina that they put – from defecation that they – that somebody put a finger in that child’s vagina?

[. . .]

[MS. ADAMS:] No.

[. . .]

[PETITIONER’S COUNSEL:] Why not?

[MS. ADAMS:] There would be no reason to go inside a child’s vagina to clean them.

[PETITIONER’S COUNSEL:] Okay. And those other cases that you’re talking about, the hundred other children approximately [with constipation or withholding issues], have you – are you aware if any of that had occurred as far as cleaning versus using a finger in the vaginal are to clean them up?

[MS. ADAMS:] I have not had a child complain of someone going in their vagina when being cleaned up.

Due to the lack of evidence to support a finding that the harm or offense was intentional or that Mr. Rocque acted with reckless disregard of the Child's welfare, and for the lack of consideration of a legal justification for the contact—reasonable hygiene cleaning of a child by a parent—we conclude that the circuit court did err in finding assault under § 4-501. As such, the circuit court erred in granting the Final Protective Order. We, therefore, reverse the judgment of the Circuit Court for Baltimore County and remand with instructions for the court to deny the Final Protective Order.

**JUDGMENT OF THE CIRCUIT COURT FOR
BALTIMORE COUNTY REVERSED AND
REMAND FOR FURTHER PROCEEDINGS
CONSISTENT WITH THIS OPINION. COSTS
TO BE PAID BY APPELLEE.**