

The Family Court of the State of Delaware

In and For New Castle County

Petitioner

A---- P----- obo A---- R----* and obo W----- R----** ----- -----, -----
Attorney Self-represented

Respondent

J----- R----- ----- -----, -----
Attorney Self-represented

File No. CN24-03269
CPI No(s) 24-12650* & 24-12655**
Nature of Proceeding Review of Commissioner's Order
Date Submitted: 7/15/2024 Date of Decision: 9/17/2024 Date Mailed/Emailed: 9/18/2024

ORDER – REVIEW OF COMMISSIONER’S ORDER

Before the **HONORABLE JANELL S. OSTROSKI**, Judge of the Family Court of the State of Delaware, are two (2) Requests for Review of a Commissioner’s Order (herein “ROCO”) regarding the June 26, 2024 Order entered on a Petition for Protection from Abuse (herein “PFA”). A---- P----- (herein “Mother”), self-represented, filed one PFA/ROCO on behalf of A----- R-----, a minor child, and one on behalf of W----- R-----, a minor child. Both Petitions were filed against J----- R----- (herein “Stepmother”). Stepmother did not file a Response.

STANDARD OF REVIEW

A party may seek review of a Commissioner’s Order pursuant to 10 Del. C. § 915(d)(1) which provides:

Any party, except a party in default of appearance before a Commissioner, may appeal a final order of a Commissioner to a judge of the Court by filing and serving written objections to such order, as provided by rules of the Court, within 30 days from the date of a Commissioner's order. A judge of the Court shall make a de novo determination of those portions of the Commissioner's order to which objection is made. A judge of the Court may accept, reject or modify in whole or in part the order of the Commissioner. The judge may also receive further evidence or recommit the matter to the Commissioner with instruction.

Under Family Court Civil Rule 53.1(b), an appeal of a Commissioner’s Order must set forth with particularity the basis for each objection.¹ Pursuant to Family Court Civil Rule 53.1(e), “From an appeal of a commissioner’s final order, the Court shall make a *de novo* determination of the matter (that is, the matter shall be decided anew by a judge), based on the record below.” Black’s Law

¹ Fam. Ct. Civ. R. 53.1(b) provides: An appeal of a commissioner’s order shall be accomplished by filing with the Court within 30 days from the date of the commissioner’s order written objections to the commissioner’s order which set forth with particularity the basis for each objection. A copy of the written objections shall be served on the other party, or the other party’s attorney, if the other party is represented.

Dictionary defines *de novo* review as “an appeal in which the appellate court uses the trial court’s record but reviews the evidence and law without deference to the trial court’s ruling.”² In reviewing the matter the “judge will make an independent decision by reviewing the Commissioner's findings of fact determined at the Commissioner's hearing, any testimony and documentary evidence on the record, and the specific objections of the moving party.”³ However, “the Court will give weight to the fact findings of the Commissioner, especially in regards to the credibility of witnesses, even though the Court is not bound by them.”⁴ The Court reviews the record independently, however, “the Commissioner has the opportunity to hear and assess witness testimony; thus, the Court applies an abuse of discretion standard of review as to the Commissioner's factual findings, wherein the Commissioner's factual findings are accepted if sufficiently supported by the record.”⁵ And, “[f]indings of fact will not be overturned on appeal unless they are found to be clearly erroneous.”⁶

FACTUAL AND PROCEDURAL BACKGROUND

Mother has two (2) children with W----- R----; W----- (age 9) and A----- (age 6). Mr. R---- is married to J---- R---- making J---- R---- the stepmother of young W----- and A-----. The parents, Stepmother, and the children attended A-----’s preschool graduation ceremony in June 2024. There was a disagreement between Mother and Stepmother in front of the children. Mother claims that the disagreement was upsetting to the children and that, during the course of the disagreement, Stepmother scratched Mother. Mother presented evidence of the scratch.⁷ Mother filed two (2) PFA Petitions, one on behalf of each child, against Stepmother on June 4, 2024 asking the Court to enter a PFA Order against Stepmother protecting both children. The Petitions were consolidated and a trial was heard by a Commissioner on June 26, 2024. Mother testified in support of her Petition and also called young W----- as a witness. The Commissioner suggested that A----- was too young to testify and Mother agreed.⁸ A----- did not testify. The Commissioner denied both Petitions. Mother filed the instant ROCOs the same day. The Court received the transcript of the proceedings below on July 15, 2024.

DISCUSSION AND CONCLUSION

² Black's Law Dictionary (10th ed. 2014).

³ Y.H. v. T.H., 2015 WL 6442087, at *2 (Del. Fam. Ct. July 10, 2015).

⁴ Id.

⁵ Cook v. Cook, 2013 WL 6869901, at *1 (Del. Fam. Ct. Sept. 24, 2013).

⁶ Kraft v. Mason, 11 A.3d 227 (Del. 2010).

⁷ See Exhibit P-1.

⁸ While Mother agreed with the Commissioner when the Commissioner suggested that A----- was too young to testify, this Court notes there is no rule, statute, or case law that supports a finding that a person is not competent to testify simply because of their age. In fact, D.R.E. 601 provides that “Every person is competent to be a witness unless these rules provide otherwise.” Furthermore, 10 *Del. C.* §4302 specifically provides that “No child under the age of 10 years may be excluded from giving testimony for the sole reason that such child does not understand the obligation of an oath. Such child’s age and degree of understanding of the obligation of an oath may be considered by the trier of fact in judging the child’s credibility.” Therefore, a child cannot be prohibited from testifying just because of their age. A child should be permitted to testify if a litigant wants to call them as a witness, and the trier of fact then makes a determination as to the appropriate weight to give the testimony.

The Court will address each of Mother's arguments separately.

A. Mother claims that the Commissioner did not give any weight to her son's testimony when making her decision.

Mother argues that the Commissioner did not consider all of the evidence because her son testified that he saw Stepmother grab Mother and her hand and because Mother submitted a picture which supported his testimony.⁹

A review of the transcript shows that young W-----'s testimony was very limited. The relevant parts were as follows:

Young W-----: I remember when we walked down, I remember J----- kind of got in [sic?] A-----, and then you told her not to touch A------. So, then that's when you put your hand out like this. And then I had seen that there was marks on your hand. And then A----- started crying. And then we went to the car and my dad called you a "nutcase".

Mother: How did all of that make you feel?

Young W-----: It made me feel scared and reminded me what happened at the old apartment that we lived in.

.....

Young W-----: I think it could have been handled better.

Mother: How do you think it could have been handled better?

Young W-----: I don't really know, but I just know that it would [sic?] be handled better.

While the Commissioner did not specifically address the weight she was giving young W-----'s testimony when she issued her oral Order or written Order, the Court does not find the omission to be reversible error. Young W-----'s testimony was very limited. While he clearly indicated that the event was upsetting to him and that he believes it could have been handled differently, he does not indicate who he believes should have acted differently. Mother wants the Court to believe that young W----- wanted Stepmother to act differently, but it is just as likely that young W----- wanted Mother and Father to act differently. The Commissioner found Stepmother's version of the events more credible than Mother's version of the events. As the Commissioner was in the best position to judge the credibility of the witnesses, the Court will defer to her findings in this respect. Therefore, the Court finds that the Commissioner did not commit an error in this regard.

⁹ See Exhibit P-1.

B. Mother claims the Commissioner was biased because she allowed the respondent to “rant on” about Mother’s “inability to accept her place in their lives” but did not allow Mother to present text messages to establish the context of the relationship.

The Court has reviewed the transcript of the proceedings. The Commissioner heard testimony from both parties as well as young W-----. Mother’s portion of the case is transcribed at pages 5 through 30. Stepmother’s portion of the case is transcribed on pages 31 through 40. Therefore, Mother testified much longer than Stepmother did. Mother was permitted to cross-examine Stepmother, and at no point did Mother object to any of Stepmother’s testimony. When Mother attempted to present evidence on the issue of the affair, the Commissioner indicated it was not relevant, and she did not need to hear it. While this Court acknowledges Mother’s frustration that she was not permitted to present evidence that she believes was relevant, there is no indication in the record that the Commissioner based her decision on Stepmother’s testimony in this regard. Therefore, Mother’s argument in this respect has no merit.

C. Mother claims the Commissioner incorrectly applied the law to the case.

Mother claims that the Commissioner erred when she denied the Petition based only on a finding that Mother failed to prove by a preponderance of the evidence that Stepmother committed child abuse pursuant to 10 *Del. C.* §1041(f). Mother asserts that she was seeking a PFA on behalf of the children pursuant to 10 *Del. C.* §1041(d) asserting that Stepmother engaged in a course of alarming and distressing conduct and pursuant to 10 *Del. C.* §1041(i) asserting Stepmother displayed conduct which any reasonable person under the circumstances would find threatening or harmful behavior.

Beginning on page 41 line 17, the Commissioner holds that:

Commissioner: There’s a reason why our legislature put a section in here specifically for child abuse. You did not check that section. My determination today needs to be whether domestic violence was committed by her against your children, which is a way of saying did she abuse your children. And I’m going to say no, you did not prove that today.

The paragraphs that you’re referencing when it goes to unlawful imprisonment, kidnapping, interference with custody, is between two related people. You are not related to her. Therefore, that does not fall into that section. The only section that you can prove today is child abuse. And I’m not going to find that she committed acts of child abuse.

Ms. P-----: What about section D?

Commissioner: Same thing. Section D, you would need to have a relationship with her. You don’t—

Ms. P-----: But —

Commissioner: -- have a relationship with her.

Ms. P-----: -- it's not me. It's the children.

Commissioner: It's -- and it's child abuse. The children are all in F, child abuse.

Ms. P-----: So, can I –

Commissioner: The child cannot take the emotions of an adult.

PFA's are governed by 10 *Del. C.* §1041. Abuse is defined at 10 *Del. C.* §1041(1). When reading the plain language of the statute, there is no restriction on the forms of abuse that apply to child victims as opposed to adults. In other words, a PFA can be entered against a perpetrator on behalf of a child if the Court finds that the perpetrator has committed *any* of the acts defined in section 1041. While the Commissioner indicated there is “a reason” that child abuse is included as a form of abuse in the statute, the Court may not attempt to discern the General Assembly's reasoning when the language of a statute is clear. As stated by the Delaware Supreme Court, “When, however, the text of a statute, in its particular context, is clear, effect must be given to the intent of the General Assembly as expressed in the language used.”¹⁰

Several Courts have made similar findings. In the case of In re M.A., a Family Court Judge affirmed a Commissioner's decision finding “that the children have proven, by a preponderance of the evidence, that Respondent either intentionally or recklessly caused physical injury to the minor children, engaged in a course of alarming or distressing conduct or engaged in conduct that rises to the level of child abuse,” in violation of 10 *Del. C.* § 1041(1)(a), (d), and (f).¹¹ In Seminazzi v Carey, a Family Court Judge affirmed a Commissioner's decision finding that, “since the Commissioner found the text messages Petitioner sent to Respondent's daughter to constitute abuse under 10 *Del. C.* § 1041(d) the Court could grant Protection from Abuse for the Respondent's daughter as part of the relief necessary to prevent the likelihood of future domestic violence.”¹² In D.T. v N.W., a Family Court Judge affirmed a Commissioner's decision finding that, “Mother committed an act or acts of abuse against Father and the child by engaging in conduct which a reasonable person under the circumstances would find threatening or harmful as defined under Section 1041(1)(h).¹³

¹⁰ State Dep't of Labor, Div. of Unemployment Ins. v. Reynolds, 669 A.2d 90, 93 (Del. 1995) (citations omitted). Further, even were the Court to consider the General Assembly's intent in including the child abuse provision within the PFA statute, the interpretation advanced by the Commissioner would result in child victims being less subject to protection than adult victims – a result that would not seem in keeping with the intent of a statute enacted to protect all victims of abuse.

¹¹ In re M.A., 2000 WL 33200946, at *2 (Del. Fam. Ct. Dec. 5, 2000).

¹² Seminazzi v. Carey, 2019 WL 5401069, at *4 (Del. Fam. Ct. Oct. 14, 2019).

¹³ D.T. v. N.W., 2020 WL 8526690, at *5 (Del. Fam. Ct. Feb. 7, 2020).

Therefore, this Court finds that the Commissioner did commit an error of law when the Commissioner held that the only way the Court could enter a PFA Order on behalf of the children and against Stepmother was if Mother was able to prove that Stepmother committed an act of child abuse.

Nonetheless, after reviewing all of the evidence submitted in this case and considering all of the types of abuse enumerated in 10 *Del. C.* §1041, this Court cannot find that Mother proved by a preponderance of the evidence that Stepmother committed any act of domestic violence against the children. Mother wants the Court to find that Stepmother engaged in a course of alarming or distressing conduct or any other conduct a reasonable person would find threatening or harmful, but the evidence does not support that finding. Young W-----'s testimony was clear that the event was upsetting, but it was not clear that it was Stepmother who was at fault for the upset. The Commissioner, who was in the best position to judge the credibility of the witnesses, found Stepmother's version of the events more credible than Mother's version. Mother had the burden of proof and she did not meet that burden.

D. For reasons more particularly set forth in her ROCO at paragraph 4, Mother is essentially arguing that the Commissioner's decision was not supported by the facts.

The Court has reviewed Mother's arguments in her ROCO. As the Commissioner was the trier of fact, this Court will defer to her assessment of credibility of the witnesses. The Commissioner found Stepmother's version of the events more credible than Mother's version of the events. The Court has reviewed the transcript of the testimony and finds that there are sufficient facts to support the Commissioner's finding in this respect. The Court finds that the Commissioner's decision was not an abuse of discretion or erroneous in this respect.

WHEREFORE, the Commissioner's Order dated June 26, 2024 is hereby **AFFIRMED**.

IT IS SO ORDERED this 17 day of September, 2024.

/ Janell S. Ostroski /

JANELL S. OSTROSKI
Judge

cc: Parties, Commissioner