

**IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY,
PENNSYLVANIA**

HS,		: No. 20-20,351
	Plaintiff	:
		:
vs.		: CIVIL ACTION - LAW
		:
HB,		:
	Defendant	: PROTECTION FROM ABUSE

Dated: August 20, 2020

**OPINION IN SUPPORT OF THE ORDER OF JULY 27, 2020, IN COMPLIANCE WITH
RULE 1925(a)(2) OF THE RULES OF APPELLATE PROCEDURE**

The Appellant, HS, (hereinafter referred to as “Appellant”) has appealed this Court’s Order docketed on July 27, 2020, which denied her request for a final Protection from Abuse Order on behalf of herself and her minor child following a hearing on that date. Appellant’s appeal was timely filed on July 28, 2020. In the Notice of Appeal, Appellant’s counsel, Mary Kilgus, Esquire, categorized this appeal as a Children’s Fast Track Appeal and, accordingly, filed a Concise Statement of Matters Complained of on Appeal simultaneously with the Notice of Appeal, pursuant to Pa.R.A.P. 905(a)(2).

This Court initially notes that according to Pa.R.A.P. 102, children’s fast track appeals are “any appeal from an order involving dependency, termination of parental rights, adoptions, custody, or paternity.” Appeals arising from an order involving protection from abuse matters are not included in the types of cases that qualify for children’s fast track status. However, in the event the appellate court deems this matter to be categorized as a children’s fast track appeal, this Court is submitting this Opinion within 30 days required Pa.R.A.P. 1925(a)(2)(ii).

Appellant raises the following claim in her Concise Statement:

1. The trial court committed an error of law when it failed to properly apply the Protection from Abuse Act and Child Protective Services law definitions of abuse to the facts of the instant case.

This Court is acutely aware of the definition of “abuse,” as written in the Protection from Abuse Act (“PFA”), which is as follows:

The occurrence of one or more of the following acts between family or household members, sexual or intimate partners or persons who share biological parenthood:

(1) Attempting to cause or intentionally, knowingly or recklessly causing bodily injury, serious bodily injury, rape, involuntary deviate sexual intercourse, sexual assault, statutory sexual assault, aggravated indecent assault, indecent assault or incest with or without a deadly weapon.

(2) Placing another in reasonable fear of imminent serious bodily injury.

(3) The infliction of false imprisonment pursuant to 18 Pa.C.S. § 2903 (relating to false imprisonment).

(4) Physically or sexually abusing minor children, including such terms as defined in Chapter 63 (relating to child protective services).

(5) Knowingly engaging in a course of conduct or repeatedly committing acts toward another person, including following the person, without proper authority, under circumstances which place the person in reasonable fear of bodily injury. The definition of this paragraph applies only to proceedings commenced under this title and is inapplicable to any criminal prosecutions commenced under Title 18 (relating to crimes and offenses).

23 Pa.C.S. §6102. The Child Protective Services Law (“CPSL”) is an entirely separate and distinct chapter from the Protection from Abuse chapter under Title 23. The CPSL involves state action to protect children, as evidenced by the purpose of the chapter:

It is the purpose of this chapter to encourage more complete reporting of suspected child abuse; to the extent permitted by this chapter, to involve law enforcement agencies in responding to child abuse; and to establish in each county

protective services for the purpose of investigating the reports swiftly and competently, providing protection for children from further abuse and providing rehabilitative services for children and parents involved so as to ensure the child's well-being and to preserve, stabilize and protect the integrity of family life wherever appropriate or to provide another alternative permanent family when the unity of the family cannot be maintained. It is also the purpose of this chapter to ensure that each county children and youth agency establish a program of protective services with procedures to assess risk of harm to a child and with the capabilities to respond adequately to meet the needs of the family and child who may be at risk and to prioritize the response and services to children most at risk.

23 Pa.C.S. §6302. However, Subsection 4 of the PFA Act references the CPSL's definition of "physically or sexually abusing minor children," which reads as follows:

- (i) Any recent act or failure to act by a perpetrator which causes nonaccidental serious physical injury to a child under 18 years of age.
- (ii) An act or failure to act by a perpetrator which causes nonaccidental serious mental injury to or sexual abuse or sexual exploitation of a child under 18 years of age.
- (iii) Any recent act, failure to act or series of such acts or failures to act by a perpetrator which creates an imminent risk of serious physical injury to or sexual abuse or sexual exploitation of a child under 18 years of age.
- (iv) Serious physical neglect by a perpetrator constituting prolonged or repeated lack of supervision or the failure to provide essentials of life, including adequate medical care, which endangers a child's life or development or impairs the child's functioning.

23 Pa.C.S. § 6303(b). "Serious physical injury" is defined under the Child Protective Services Act as an injury that: "(1) causes a child severe pain; or (2) significantly impairs a child's physical functioning, either temporarily or permanently." 23 Pa.C.S.

§6303(a). Appellant contends that the Court failed to properly apply these definitions to the facts of this case when it denied Appellant's request for a Protection from Abuse Order on behalf of herself and her child.

As in every case where a request for the entry of a final protection from abuse order is contested, this Court conducted a hearing, wherein both parties and their witnesses testified regarding incidents where acts of abuse are alleged to have occurred. In the context of a PFA case, the court's objective is to determine whether the victim is in reasonable fear of imminent serious bodily injury. The Court heard testimony from Appellant, her coworker, and her friend. The Court also heard testimony from Appellee, a Children and Youth assessment caseworker, the parties' landlord, and Appellee's mother. The facts of the case as presented by each side differed vastly. At the conclusion of the hearing, this Court carefully considered the evidence presented and made credibility determinations regarding the witnesses, before determining that Appellant had not met her burden of proof and finding that the evidence did not warrant the issuance of a final PFA Order.

This Court respectfully asserts that Appellant's contention that this Court made an error of law and/or committed an abuse of discretion in failing to properly apply the definition of abuse to the facts of this case is in actuality a challenge to the weight of the evidence. As stated, this Court is aware of the definition of abuse as written in the Protection from Abuse Act. However, in order to grant Appellant's request for a final protection from abuse order on behalf of her and the child, this Court would have had to believe Appellant's version of the facts of the case over Appellee's version. Appellant's

stems from her belief that the Court erred in according the Appellee's side of the story greater weight than her own.

The weight of the evidence is exclusively for the finder of fact, who is free to believe all, none, or some of the evidence and to determine the credibility of the witnesses. The fact-finder also has the responsibility of resolving contradictory testimony and questions of credibility. [The Superior Court gives] great deference to the trial court's decision regarding a weight of the evidence claim because it had the opportunity to hear and see the evidence presented.

Commonwealth v. Roane, 204 A.3d 998, 1001 (Pa. Super. 2019) (internal citations and quotation marks omitted). "A reversal is not necessary unless it is so contrary to the evidence as to shock one's sense of justice." *Id.*

This Court had the opportunity to hear in-person testimony and observe the parties and their witnesses, which enabled it to determine credibility and carefully weigh the evidence prior to determining that the entry of a final PFA was not warranted. As such, this Court respectfully requests that Appellant's appeal be denied, and the order dismissing the request for a final order under the Protection from Abuse Act be affirmed.

By the Court,

Joy Reynolds McCoy, Judge