

Cite as 2023 Ark. App. 582
ARKANSAS COURT OF APPEALS
DIVISION I
No. CV-23-7

JUAN DIEGO MORALES

APPELLANT

V.

MADELEINE MORALES

APPELLEE

Opinion Delivered December 13, 2023

APPEAL FROM THE COLUMBIA
COUNTY CIRCUIT COURT
[NO. 14DR-22-121]

HONORABLE MARY THOMASON,
JUDGE

AFFIRMED

ROBERT J. GLADWIN, Judge

This one-brief appeal arises from the September 8, 2022 final order of protection entered by the Columbia County Circuit Court against Juan Morales on the petition of his wife, appellee Madeleine Morales. Juan argues that the circuit court erred in granting a ten-year order of protection against him in favor of Madeleine, in extending the final order of protection to cover the parties' minor children, and in awarding temporary custody of them to Madeleine. We affirm.

I. Facts and Procedural History

On or about August 10, 2022, Madeleine filed a petition for order of protection against Juan alleging that there was an immediate and present danger of domestic abuse to

herself.¹ She also sought temporary custody of the parties' minor children and sought to preclude Juan from going to their school. Along with the petition for an order of protection, an affidavit of domestic abuse was attached with specific allegations against Juan as to Madeleine and a singular reference to one of the children. The petition was prepared by a victim assistance coordinator with the prosecuting attorney's office for the Thirteenth Judicial District, who also appeared at the final hearing, along with Samantha Green, a victim advocate for Madeleine.

That same day, an ex parte order of protection was entered by the circuit court awarding a protective order against Juan, precluding him from contact not just with Madeleine, but also with the parties' minor children, and further awarding Madeleine temporary custody.

At the final hearing on September 7, both parties appeared pro se. The circuit court heard testimony from Madeleine; her sister, Mereyda Ortiz; Juan; and his father, Deodoro Morales, as well as Ms. Green, who testified on Madeleine's behalf. No exhibits were offered or admitted into evidence, although the circuit court did note for the record that Madeleine had previously pled guilty to second-degree battery.

During her testimony, Madeleine acknowledged having been arrested on that charge and receiving probation as a result of her guilty plea. She explained that she was looking for

¹The second paragraph of the petition providing for the names of minors and/or adjudicated incompetent persons upon whose behalf the petition was filed was left blank; however, in the fifth paragraph, the parties' three minor children were listed as requested beneficiaries of the order of protection.

a job and a home to stay in with the children. She stated that she could keep the children where she was currently residing, but she did not divulge that location. Madeleine made allegations of abuse against her mother-in-law and further alleged that Juan had beaten and raped her, but she acknowledged that she did not report the incidents to law enforcement. Madeleine's sister, Mereyda Ortiz, testified that she saw and talked to her sister after the alleged rape.

Juan testified that Madeleine was not "right in her head" and that Madeleine's sister, whom he knew as Jessica Lopez—despite her testimony that her name is Mereyda Ortiz—should not be believed because she was even lying about her name. Juan testified that Madeleine had been treated in a mental hospital and that she had been diagnosed with "schizophrenia, psychotic, bipolar, and psychosis" and that she had attacked law enforcement and run around naked in the streets. He also stated that she had attacked him and that law enforcement had to draw their weapons on her. He testified that Madeleine had been treated at a mental hospital about four years ago, that she heard voices, and that she was supposed to take medication, but had not been doing so.

Juan explained that he wanted Madeleine to get help, that he did not want to be around her anymore because of the allegations she had made, and that he wanted a divorce. He acknowledged that Madeleine can appear credible and that she makes people believe her, but he claimed that she needs further help and to take her medicine. Juan denied raping Madeleine, threatening to kill the people that helped her, or claiming that because he was a

United States citizen that he could do whatever he wanted. Juan also denied threatening to send Madeleine to a mental hospital but rather stated that he was just trying to get her help.

Juan's father, Deodoro Morales, also testified regarding Madeleine's allegedly erratic behavior and that law enforcement had been involved. He explained that the parties' minor children had lived with his wife and him for four years. He detailed that Madeleine had lived in multiple places during that period and that Juan lived in a mobile home next to his house and sometimes stays in his house. He also asserted that he had not been aware that Juan was not allowed to be around the children.

At that point, the circuit court called Ms. Green to testify on behalf of Madeleine without affording Juan an opportunity to either put on additional evidence or confirm that he had rested. Further, although Ms. Green confirmed that she was not present for any of the incidents alleged by Madeleine, she testified regarding certain events and Juan's actions. It was at this point that the circuit court clarified for the record that Madeleine had pled guilty to a second-degree-battery charge a month earlier for which she received five years' probation.

At the conclusion of the hearing the circuit court announced its decision to grant a ten-year order of protection, the maximum length allowed by law; to award Madeleine custody of the minor children (indicating it was only a temporary order, and final custody would be determined in the divorce action should it be filed); and to deny Juan any visitation with the minor children. *See* Ark. Code Ann. § 9-15-205 (Repl. 2020). The final order of protection was entered on September 8, reflecting the circuit court's oral ruling granting

Madeleine a ten-year order of protection, awarding her temporary custody of the minor children, and denying Juan visitation. However, it notably includes a section titled “Minor Children Protected Under This Order” with a response of “None.” Juan filed a timely notice of appeal on October 7.

II. *Standard of Review and Applicable Law*

The standard of review after an order of protection is granted is whether the circuit court’s findings are clearly erroneous. *Parsons v. Parsons*, 2022 Ark. App. 493, at 8, 656 S.W.3d 188, 194; *see also Poland v. Poland*, 2017 Ark. App. 178, at 2, 518 S.W.3d 98, 100. A finding is clearly erroneous when, although there is evidence to support it, the reviewing court on the entire evidence is left with a definite and firm conviction that a mistake has been committed. *Parsons, supra*. Disputed facts and determinations of the credibility of the witnesses are within the province of the fact-finder. *Id.*

As in *Morales v. Garcia*, 2021 Ark. App. 438, at 4, Madeleine filed for an order of protection on behalf of herself and her children pursuant to Arkansas Code Annotated section 9-15-201 (Repl. 2020) of the Domestic Abuse Act. Under that section, when a petition for an order of protection is filed, the circuit court may provide relief to the petitioner upon a finding of domestic abuse. *See* Ark. Code Ann. § 9-15-205(a); *see also Baltz v. Baltz*, 2021 Ark. App. 202, at 5, 624 S.W.3d 338, 341. “Domestic abuse” is defined as “[p]hysical harm, bodily injury, assault, or the infliction of fear of imminent physical harm, bodily injury, or assault between family or household members.” *See* Ark. Code Ann. § 9-15-

103(4)(A) (Repl. 2020). As the petitioner, Madeleine had the burden of proving domestic abuse committed against both her and the children. *See Morales, supra*.

III. Discussion

Juan argues that the circuit court committed reversible error when it granted a ten-year order of protection against him. He asks this court to reverse and deny the petition for order of protection, or in the alternative, he submits that we should reverse and remand for a new trial.

Although Juan indicated at the hearing that he had no plans to be around his wife anymore and that he wanted a divorce, he notes that the entry of an order of protection has an ongoing significance in a child-custody dispute as this court noted in *Poland, supra*, given that Arkansas Code Annotated section 9-13-101(c) (Repl. 2020) provides:

(c)(1) If a party to an action concerning custody of or a right to visitation with a child has committed an act of domestic violence against the party making the allegation or a family or household member of either party and such allegations are proven by a preponderance of the evidence, the circuit court must consider the effect of such domestic violence upon the best interests of the child, whether or not the child was physically injured or personally witnessed the abuse, together with such facts and circumstances as the circuit court deems relevant in making a directive pursuant to this section.

(2) There is a rebuttable presumption that it is not in the best interest of the child to be placed in the custody of an abusive parent in cases in which there is a finding by a preponderance of the evidence that the parent has engaged in a pattern of domestic abuse.

2017 Ark. App. 178, at 8, 518 S.W.3d at 103; Ark. Code Ann. § 9-13-101(c). Juan maintains that the statute applies because he has since filed an action for divorce and is seeking custody or, alternatively, joint custody of the parties' minor children.

He maintains that this is a classic case of “he said, she said.” There were no exhibits offered or admitted into evidence, and each party, who appeared pro se, called only a relative to testify. Juan notes that he never actually rested his case because Ms. Green, who offered testimony on behalf of Madeleine, was interjected into his case. He submits that the only independent, nonbiased evidence apparently considered was the circuit court’s notation that Madeleine had pled guilty a month earlier to a second-degree-battery charge, which actually corroborated Juan’s testimony regarding her unstable mental state and run ins with law enforcement.

While the circuit court questioned Madeleine, through an interpreter, as to the allegations contained in her petition and affidavit, Juan offered primarily narrative testimony regarding the parties’ situation and Madeleine’s allegations and repeatedly stated that he did not care to go around Madeleine any longer but did want help for her and wanted to see his children.

Having reviewed the record before us and the evidence presented in this case, we hold that the circuit court did not clearly err in granting Madeleine’s petition for an order of protection against Juan. His argument to the contrary is nothing more than a request for us to reweigh the evidence and credibility of the witnesses. Disputed facts and determinations of the credibility of the witnesses are within the province of the fact-finder, *Parsons, supra*; accordingly, we affirm with respect to that issue.

Although Juan also argues that the circuit court erred in extending the final order of protection to cover the parties’ minor children, we note that the final ten-year order of

protection lists no minor children protected under this order. As a result, we need not address Juan’s argument on this issue. Moreover, despite his brief stating that he is challenging the circuit court’s award of temporary custody of the parties’ three minor children to Madeleine, he has failed to develop a convincing argument on this issue and includes only one conclusory statement that we “should also reverse the award of custody and visitation to [Madeleine].” Because it is axiomatic that our appellate courts will not consider arguments that are unsupported by convincing argument or sufficient citation to legal authority, *see Scherling v. Scherling*, 2023 Ark. App. 402, at 9, we decline to consider this argument.

Affirmed.

THYER and MURPHY, JJ., agree.

Law Offices of Shepherd & Shepherd, P.A., by: *Matthew J. Shepherd*, for appellant.

One brief only.