

MAYA DVILANSKY

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NO. 2016-CA-0279

VERSUS

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COURT OF APPEAL

JAMES CORREU

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FOURTH CIRCUIT

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STATE OF LOUISIANA

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BONIN, J., DISSENTS IN PART WITH REASONS.

I respectfully dissent about the disposition of an issue raised by Mr. Correu concerning the issuance of the protective order as it relates to the couple’s child and the ensuing overly restrictive terms and conditions of his visitation.

I agree with Mr. Correu’s contention that there is an insufficient factual basis for a finding that this child is a “victim of family violence” within the statutory definition. “ ‘Victim of family violence’ means the family or household member abused and his or her children *who might be in danger if left in the domicile.*” La. R.S. 46:2121.1 (3) (emphasis added). There is simply no evidence that the father’s physically abusive behavior was directed toward his child or that the child was or would be physically endangered by the acts of the father. Thus, there could be no *independent* basis for the issuance of an order for protection of the child. This factual error, moreover, interdicts the trial judge’s decision on visitation. Accordingly, I would reverse and remand for a reconsideration of the decree insofar as the visitation provisions.

But because the Legislature finds that “children, though often not physically assaulted, suffer deep and lasting emotional effects, and it is most often the children of those parents who commit family violence that perpetuate the cycle by abusing their spouses,” La. R.S. 2121 B, that the order which here protects the

mother extends to and covers the child. *See* La. R.S. 46:2135 A, 2136 A. And, for that reason, there is now no practical relief for Mr. Correu beyond seeking a modification of the protective order's visitation provisions in the district court. *See* La. R.S. 46:2136 D.