

DA 18-0523

IN THE SUPREME COURT OF THE STATE OF MONTANA

2018 MT 313N

IN RE THE PARENTING OF:
L.G.L., a minor child,

NELSON LUKE OYLER,

Petitioner and Appellee,

And

LYNDSEY LALICKER,

Respondent and Appellant.

APPEAL FROM: District Court of the Eighteenth Judicial District,
In and For the County of Gallatin, Cause No. DR 14-172B
Honorable Rienne McElyea, Presiding Judge

COUNSEL OF RECORD:

For Appellant:

Kevin S. Brown, Paoli & Brown, P.C., Livingston, Montana

For Appellee:

Margaret Sullivan Braun, Bridger Law, Bozeman, Montana

Submitted on Briefs: December 19, 2018

Decided: December 19, 2018

Filed:



Clerk

Justice James Jeremiah Shea delivered the Opinion of the Court.

¶1 Pursuant to Section I, Paragraph 3(c), Montana Supreme Court Internal Operating Rules, this case is decided by memorandum opinion and shall not be cited and does not serve as precedent. Its case title, cause number, and disposition shall be included in this Court's quarterly list of noncitable cases published in the Pacific Reporter and Montana Reports.

¶2 Lyndsey Lalicker (Mother) appeals the Order of the Eighteenth Judicial District Court, Gallatin County, denying her Notice of Objections to the Standing Master's Order of Protection. We affirm.

¶3 This is the second appeal concerning Mother and Nelson Luke Oyler (Father) regarding the custody of their minor child, L.G.L. The facts underlying the parenting plan action that precedes this matter are detailed in this Court's previous opinion, which affirmed an award of parenting time to Father under the parenting plan.¹

¶4 On April 14, 2018, a Missing Endangered Person Advisory was circulated by the Montana Department of Justice seeking information on the location of L.G.L., suspecting Mother of absconding with the minor child, after Mother failed to exchange custody of L.G.L. with Father as ordered by the parenting plan. The State of Montana filed a felony custodial interference charge against Mother and an arrest warrant was issued. Mother was arrested shortly after in Salmon, Idaho. L.G.L. was later found in Dillon, Montana in the care of her maternal grandfather.

¹ *In re L.G.L.*, No. DA 18-0125, 2018 MT 283N, ¶¶ 3-7, 17, 2018 Mont. LEXIS 405.

¶5 On April 16, 2018, Father applied to the District Court for a temporary order of protection against Mother on behalf of L.G.L. and himself. On May 2, 2018, the Standing Master held a hearing, received testimony from Gallatin County Detective Sergeant Jeremy Kopp, Mother, and Father, and issued her findings orally. On May 3, 2018, the Standing Master signed a written Order of Protection, allowing Mother supervised parenting with L.G.L. twice a week for up to three hours. The Standing Master issued that the Order of Protection be in place until May 2019, or, if Mother obtained final disposition of her custodial interference charge, either party could petition the District Court for a modification of the Order of Protection.

¶6 On May 10, 2018, Mother filed her Notice of Objections to the Standing Master's Order of Protection. On July 13, 2018, the District Court held a hearing on the Notice of Objections. On August 23, 2018, the District Court denied Mother's Notice of Objections to the Order of Protection. Mother appeals.

¶7 We review de novo a district court's decision to adopt a standing master's report to determine whether it applied the correct standards of review to the standing master's findings of fact and conclusions of law. *Patton v. Patton*, 2015 MT 7, ¶ 17, 378 Mont. 22, 340 P.3d 1242 (citing *In re G.J.A.*, 2014 MT 215, ¶ 11, 376 Mont. 212, 331 P.3d 835). Upon a properly made objection, a district court reviews a standing master's findings of fact for clear error. *In re Marriage of Kostelnik*, 2015 MT 283, ¶¶ 14-15, 381 Mont. 182, 357 P.3d 912. "As to evidence taken by a standing master . . . a district court may not modify or reject the master's findings by substituting its own view of the evidence for that of the master." *In re G.J.A.*, ¶ 19.

¶8 A district court may continue, amend, or make permanent a temporary order of protection upon a showing of good cause, and this Court will not overturn a district court’s decision absent an abuse of discretion. *Boushie v. Windsor*, 2014 MT 153, ¶ 8, 375 Mont. 301, 328 P.3d 631 (citation omitted); *Schiller v. Schiller*, 2002 MT 103, ¶ 24, 309 Mont. 431, 47 P.3d 816. A district court abuses its discretion when it acts arbitrarily without conscientious judgment or exceeds the bounds of reason resulting in substantial injustice. *Boushie*, ¶ 8 (citation omitted).

¶9 Montana law regarding temporary orders of protection states in relevant part:

(1) A petitioner may seek a temporary order of protection from a court . . . The petitioner shall file a sworn petition that states that the petitioner is in reasonable apprehension of bodily injury or is a victim of one of the offenses listed in [§ 40-15-102, MCA,] has a relationship to the respondent if required by [§ 40-15-102, MCA,] and is in danger of harm if the court does not issue a temporary order of protection immediately.

(2) Upon a review of the petition and a finding that the petitioner is in danger of harm if the court does not act immediately, the court shall issue a temporary order of protection that grants the petitioner appropriate relief. . . .

Section 40-15-201, MCA; *see also* § 40-15-102(3), MCA (allowing a parent to file an order of protection on behalf of their minor child). Following the issuance of a temporary order of protection, a district court must hold a hearing to determine “whether good cause exists for the temporary order of protection to be continued, amended, or made permanent.”

Section 40-15-202(1), MCA. A written order of protection may include restraining the respondent from any other named family member who is a minor if the district court determines that the minor was a victim of abuse, a witness to abuse, or endangered by the environment of abuse. Section 40-15-204(4), MCA.

¶10 The standing master is in the best position to judge the credibility of the parties. *See In re Marriage of Edwards*, 2015 MT 9, ¶ 18, 378 Mont. 45, 340 P.3d 1237 (citations omitted); *see also Boushie*, ¶ 12 (citations omitted). We generally will not second guess a standing master's determination regarding the weight and strength of conflicting testimony or the weight of other evidence presented. *See In re Marriage of Edwards*, ¶ 18 (citations omitted).

¶11 In this case, the District Court determined that the testimony and evidence presented supported the Standing Master's finding that Father and L.G.L. were in reasonable apprehension of bodily injury from Mother and that an Order of Protection was appropriate. The District Court specifically noted Mother's obstructive behavior with parenting exchanges, her escalating level of hostility toward Father, and her concerning treatment of L.G.L. The District Court concluded that Mother's Notice of Objections failed to demonstrate clear error in the Standing Master's factual findings.

¶12 Mother argues that the District Court erred in upholding the Order of Protection. Mother disputes the Standing Master's findings that Father and L.G.L. were in legitimate danger of harm or that Mother abused L.G.L. We disagree.

¶13 The District Court properly conducted a hearing to determine the merits of Mother's objections and whether good cause existed for the Order of Protection. *See* § 40-15-202(1), MCA. The District Court considered Kopp, Mother, and Father's testimony from the Standing Master's hearing on the Order of Protection and the relevant statutory criteria. *See* §§ 40-15-201, -204(4), MCA. The District Court correctly concluded the evidence presented supported the Standing Master's finding that Father and L.G.L. were in

reasonable apprehension of bodily injury from Mother, and that an Order of Protection was appropriate, due to her troubling behavior. *See* § 40-15-201, MCA; *In re Marriage of Edwards*, ¶ 18; *Boushie*, ¶ 12.

¶14 The District Court applied the correct standard of review in upholding the Standing Master's findings in its Order of Protection and did not clearly err in denying Mother's Notice of Objections. *See Patton*, ¶ 17; *In re G.J.A.*, ¶ 11; *In re Marriage of Kostelnik*, ¶¶ 14-15. Accordingly, the District Court did not abuse its discretion in continuing the Order of Protection. *See Boushie* ¶ 8; *Schiller*, ¶ 24.

¶15 We have determined to decide this case pursuant to Section I, Paragraph 3(c) of our Internal Operating Rules, which provides for memorandum opinions. In the opinion of the Court, the case presents a question controlled by settled law or by the clear application of applicable standards of review. We affirm.

/S/ JAMES JEREMIAH SHEA

We concur:

/S/ MIKE McGRATH
/S/ LAURIE McKINNON
/S/ JIM RICE
/S/ INGRID GUSTAFSON