
In The
Court of Special Appeals
of Maryland

No. 1259

September Term, 2013

MS. C,

Appellant,

vs.

MR. G

Appellee.

*Appeal from the Circuit Court for Anne Arundel County
(Hon. Philip T. Caroom, Judge)*

**BRIEF OF AMICI CURIAE *DOMESTIC VIOLENCE
LEGAL EMPOWERMENT & APPEALS PROJECT,
LEIGH GOODMARK OF UNIVERSITY OF
MARYLAND FRANCIS KING CAREY SCHOOL OF
LAW, THE MARYLAND NETWORK AGAINST
DOMESTIC VIOLENCE, AND THE WOMEN'S LAW
CENTER OF MARYLAND, INC.* IN SUPPORT OF
APPELLANT**

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STATEMENT OF THE CASE

Amici adopts the Statement of the Case contained in Appellant's Brief.

QUESTIONS PRESENTED

Amici adopts the Questions Presented contained in Appellant's Brief.

STATEMENT OF THE FACTS

Amici adopts the Statement of the Facts contained in Appellant's Brief.

INTRODUCTION

Pursuant to Maryland Rule 8-511(b), *amici* have requested permission from this Court to file this amicus brief. *Amici*, with its expertise in the experience of victims of abuse in the legal system, respectfully supports Ms. C's appeal from the Circuit Court decision below. In the trial, a jury found for her ex-husband, Mr. G, on 10 counts of intentional infliction of emotional distress, assault, malicious prosecution, and abuse of process. As described by Appellant, the trial court abused its discretion or plainly erred in multiple rulings, which barred Ms. C from introducing evidence necessary to defend against these claims and irreparably and improperly prejudiced the jury against her. The cumulative impact of the court's rulings was to deny Ms. C her due process right to a fair trial.

Despite a voluminous record below, Ms. C and Mr. G's story is quite simple. Mr. G abused Ms. C. He did so through threats, intimidation and surveillance. A Maryland court adjudicated him an abuser and entered a final protective order on Ms. C's behalf. Mr. G's adjudicated abuse of Ms. C includes a striking degree of coercive control.

The underlying tort litigation was the latest extension of that abuse. Mr. G has used this litigation just as he did the earlier divorce trial: to paint a highly compelling and utterly false picture of Ms. C as manipulative, spiteful and deserving of punishment. Unwittingly, the court below became an instrument of this abuse by

permitting Mr. G to continue his legally irrelevant character assassination of Ms. C, while silencing her attempts to explain her actions – an essential element of her defense.

The purpose of this brief is two-fold. The first is to highlight the clear, unrelenting pattern of domestic abuse, litigation abuse, and coercive control that the record shows Mr. G visited upon Ms. C. The second is to position this litigation in the context of well-documented problematic trends in family courts’ responses to mothers in custody litigation who raise a father’s abuse. *Amici* hopes this will assist this Court in assessing the trial’s fundamental fairness.

ARGUMENT

I. THE RECORD ESTABLISHES THAT Mr. G ABUSED MS. C.

A. Mr. G Is An Adjudicated Abuser.

On July 1, 2008, Ms. C filed for and received a temporary protective order against G. Seven days later, a Maryland court entered a final protective order for Ms. C against G after a lengthy, contested hearing where G was represented by counsel.¹ At that time, Maryland was the only state in the country that required “clear and convincing evidence” for the entry of a final protective order.² Thus, G was legally deemed an abuser under the most demanding civil standard of proof for obtaining a protective order *in the country*.³

¹ See Appendix to Brief of *Amici Curiae* (hereinafter “*Amici App.*”) 2, 10; *Amici App.* 17 (Mr. G indicating he testified); E74 (indicating the judge heard witnesses on July 8).

² See 2014 Md. Laws Ch. 111 (S.B. 333) (amending the burden of proof for the issuance of a final protective from “clear and convincing evidence” to “a preponderance of the evidence” effective October 1, 2014).

³ American Bar Association Commission on Domestic Violence, Standards of Proof for Civil Protection Orders BY State (June 2009) available at http://www.americanbar.org/content/dam/aba/migrated/domviol/pdfs/Standardsof_Proof_by_State.authcheckdam.pdf; see also Md. FL § 4-506(c).

The court below suggested otherwise. It presented to the jury as if the final protective order hearing never occurred and a final order was never entered. It stated:

[B]etween July 8th and October 23rd, the District Court Order stayed in effect, even though the trial was not finished, it did not become a final judgment that was binding on the parties. It was in effect like continuing the Temporary Order that can occur without a trial. So, that Temporary Order was basically continued from July 1 through the District Court hearing on July 8th, all the way to October 23rd.⁴

The court's treatment of this final and fully adjudicated protective order as "temporary" and non-final is consistent with its pattern of minimizing Mr. G's history of abuse against Ms. C. The jury should have been told that the Maryland District Court granted a final protective order on July 8, 2008, under a clear and convincing standard of proof, and in rejection of G's claims of innocence.⁵ Evidence of G's history of abuse was vital to the jury's understanding of Ms. C's fear and the legitimacy of her actions, which Mr. G alleged were "malicious" and tortious.⁶ The court negated that history by treating an adjudication of clear and convincing evidence as "temporary" and "non-final."

B. Mr. G 's Abuse Of Ms. C Is Severe, Systematic, And Follows Classic Patterns.

This record paints an all-too-familiar picture of abusive coercive control. Coercive control "entails a malevolent course of conduct that subordinates women to an

⁴ E74-75 (describing this as a "stipulation and instruction of law about what happened between July 8th and October 23rd"). A stipulation ultimately given to the jury describes the July 8, 2008 protective order as a "final" protective order. E686. The fact remains that the trial court, in comments directed to the jury, indicated otherwise.

⁵ Mr. G had appealed the entry of this final protective order, but on October 23, 2008, Mr. G chose to forego having a trial *de novo* on the protective order and instead accepted a consent order. *Amici App.* 4-5; *see also Amici App.* 15-16.

⁶ *Coburn v. Coburn*, 674 A.2d 951, 957 (Md. 1996) (the Maryland legislature has "recognized the importance of evidence of a pattern of abuse in determining the need for protection against future abuse").

alien will by violating their physical integrity (domestic violence), denying them respect and autonomy (intimidation), depriving them of social connectedness (isolation), and appropriating or denying them access to the resources required for personhood and citizenship (control).”⁷ In this way, threats and intimidation can create terror even in the absence of a physical attack on the person.

In her petition for a protective order, Ms. C asserted that G forced her to “sleep with” him; dictated where she could sleep; pushed and threw things at her; “continuously threaten[ed] to hit me if [she doesn’t] do what he says;” threatened to “cut [her] neck and leave [her] paralyzed if [she] touch[ed] his computer or if [she] answer[ed] the telephone;” threatened to take their daughter to “punish” her; tracked her through a device planted on her car; monitored her emails, computer use and phone calls; threatened her friends that he would “destroy” her if they persisted in speaking with her; and called her throughout the day to verify where she was at any given moment – the net effect being that she feared “for [her] life, [her] safety and the safety of [her] daughter.”⁸

In the case below, Ms. C testified that G was “violent to me in the last two months that we lived together,”⁹ as well as prior to that, on “many occasions.”¹⁰ Ms. C lived “in total fear.”¹¹ While being cross-examined by G, she explained why she finally filed for a protective order in July 2008:

I was threatened to death and I couldn’t, I didn’t have any help. . . . I felt helpless. . . . Every movement I took you knew about I couldn’t use my cell phone because you were tracking through my cell phone. . . . You were tracking through my car. You always knew my whereabouts. . . . You recorded my every conversation on the phone.¹²

⁷ Evan Stark, *Coercive Control: How Men Entrap Women in Personal Life* 15 (Oxford U. Press, 2007).

⁸ E655-656.

⁹ E276.

¹⁰ *Id.*

¹¹ *Amici App.* 8.

¹² *Amici App.* 11-12. Indeed, G confirmed that he wrote an email on October 1, 2008 in which he said “with reference to [Ms. C] that, ‘She will remain (Continued...)

She continued testifying later that day:

I felt like a rat in a cage waiting for Mr. G to point his finger down and say okay you're dead or point it up and say you survive. It was horrible. I didn't have the right to do anything. He was constantly confronting me, checking my handbag when I was coming home.¹³

She had been forced to live in fear:

It was a state that I couldn't even – I never had that before. I couldn't even move my legs. My knees did not respond to the movements because they shake so much. *I have never been in a state of fear as Mr. G made me in 2008.*¹⁴

Despite the court's dismissiveness toward Ms. C's credibility, *amici* submit that this degree of specific, granular detail, as well as expressions of extreme fear and distress, are hard to treat as wholesale fabrications.

Both Ms. C's protective order, and the record of this case, align with the literature's depiction of a classic pattern of control and intimidation. The classic pattern includes multiple types of abuse – psychological (he “threatens to hit me if I don't do what he says...threatens to cut my neck . . . threatens to destroy me”), economic (demanding damages awards), and sexual (he “forces me to sleep with him”).¹⁵ All of

under surveillance and I will be watching her every step and questioning her every word”. *Amici* App. 7 (Mr. G testifying that, “[y]es, absolutely I wrote that.”).

¹³ E443. Before Ms. C could testify further about her fear of Mr. G during their marriage, the trial court directed the jury to disregard history, instructing that what occurred “during the marriage is not relevant to this case.” *Id.* For reasons aptly described in the Appellant's brief, this instruction was erroneous. *See* Appellant's Br. 21-24.

¹⁴ *Amici* App. 8 (emphasis added).

¹⁵ *See* Peter G. Jaffe & Claire V. Crooks, *Assessing the Best Interests of the Child: Visitation and Custody in Cases of Domestic Violence*, in *Parenting by Men Who Batter: New Directions for Assessment and Intervention*, 45, 46 (Jeffrey L. Edleson & Oliver J. Williams eds., 2007); Lundy Bancroft & Jay G. Silverman, *The Batterer As Parent: Addressing the Impact of Domestic Violence on Family Dynamics* (2002).

these aspects matter deeply. Indeed, a majority of battered women report that the psychological abuse they suffered impacted them more severely than physical attacks.¹⁶

Mr. G's controlling behavior is all the more striking – and, again, all the more typical of the form – given his unflinching sense of righteousness in exercising this controlling behavior. While cross-examining a witness about his surveillance of Ms. C, Mr. G stated: “Ma’am, I put one, two or three GPS on her car, in fact three, the last through a private investigator.”¹⁷ Mr. G also freely admitted to calling Ms. C incessantly one evening after having left her a threatening message, asking her during the trial, “why in the world [didn’t] you just answer if that could put an end to [my] endless calling?”¹⁸ At the time of this telephone episode, Ms. C called a police officer, who came to her home, picked up the phone when it rang, and spoke directly to Mr. G. The officer then advised her to obtain a (second) protective order.¹⁹ Incredibly, Mr. G used Ms. C’s petition for that protective order—*filed at the urging of law enforcement*—as the basis for several of his numerous tort claims against her, including abuse of process and intentional infliction of emotional distress.²⁰

Mr. G’s extreme coercive control and intimidation became clear even to the court-appointed neutral custody evaluator in the domestic relations case. Ms. Harger met extensively with both parties.²¹ She was unequivocal in her description of Mr. G’s

¹⁶ Peter Jaffe *et al.*, *Access Denied: The Barriers of Violence & Poverty for Abused Women and their Children After Separation*, 1, 2 (2002).

¹⁷ E394 (at which point Mr. G was instructed not to testify when asking questions); *see also* E379; E432; *Amici App.* 12.

¹⁸ E435; *see also* E326-327 (Mr. G admitting that his recollection is that he called 10 to 20 times).

¹⁹ E420 (Ms. C testifying that “. . . so the police officer answered the phone and he – after his conversation with Mr. G he asked me to file for a protective order.”).

²⁰ *See Amici App.* 19-21.

²¹ E378.

abusive behavior, testifying that he was “very controlling”²² – and recognizing his conduct as “textbook domestic violence.”²³

This history – some of which Mr. G admitted and much of which was proven or uncontested – was intrinsically relevant and critical to the jury’s assessment of whether Ms. C’s requests for legal protection were tortious and malice-driven, which Mr. G alleged, or made in good faith and based on probable cause. The trial court prevented Ms. C from testifying both about her terror of Mr. G and his behavior that instilled this fear, ostensibly on the theory that what occurred “during the marriage is not relevant to this case.”²⁴ The court also excluded much of Ms. Harger’s first-hand testimony on the same subject.²⁵ These exclusions were fundamental error,²⁶ and made it impossible for Ms. C to present the heart of her defense.

C. Litigation Is An Extension Of Mr. G's Abuse.

It is well-documented that domestic abusers often escalate their abuse when victims leave them.²⁷ One particularly effective *legal* means of post-separation abuse is to employ manipulative litigation aimed at draining the victim emotionally and financially.²⁸ “In some cases of domestic violence, perpetrators actively employ the legal

²² E379.

²³ E387.

²⁴ E443; *see also* E385.

²⁵ Mr. G objected to Ms. Harger’s testimony and the court ultimately instructed the jury that Ms. Harger was not called as an expert witness and that only her testimony regarding three discrete issues should be considered. E391-392.

²⁶ *See* Coburn, 674 A.2d at 957-58 (patterns of abuse are relevant in the adjudication of protective orders), *supra* n.6.

²⁷ Martha R. Mahoney, *Legal Images of Battered Women: Redefining the Issue of Separation*, 90 Mich. L. Rev. 1 (1991).

²⁸ *See, e.g.*, Peter G. Jaffe, Nancy K.D. Lemon, and Samantha E. Poisson, *Child Custody & Domestic Violence* 32 (2003); Kara Bellew, *Silent Suffering: Uncovering and Understanding Domestic Violence in Affluent Communities*, 26 Women’s Rights L. Rep. 39, 42-45 (2005) (listing the primary forms of abuse as financial abuse, psychological abuse, physical abuse, and litigation abuse); *see also* Andrea Vollans, *Court-Related Abuse and Harassment* (2010).

system as a means of maintaining ongoing control of their victims.”²⁹ According to the American Psychological Association, “[w]hen a couple divorces, the legal system may become a symbolic battleground on which the male batterer continues his abuse. . . .”³⁰ The very legal system meant to protect victims can thus become a venue for re-victimizing.³¹

Malicious prosecution suits, in particular, can arm abusers with the legal power to punish victims for seeking protection from abuse. Indeed, Mr. G's malicious prosecution and abuse of process claims were based on Ms. C's reports that he violated the July 8, 2008 final protective order and that she filed for a second order of protection (upon the advice of a police officer). Worse still, Mr. G's manipulative use of courtrooms extends well beyond Ms. C. He has sued, among others: the court-appointed custody evaluator;³² the attorney appointed to represent the interest of their daughter (both for malpractice and for tort claims similar to those in the case at bar);³³ a neighbor and friend of Ms. Cs, who testified on her behalf; the forensic child psychiatrist who informed Ms. C in 2008 of the potential sexual molestation of their daughter after evaluating her;³⁴ and Ms. C's former attorney.³⁵ Notably, every

²⁹ Peter G. Jaffe, et al., *Parenting Arrangements After Domestic Violence*, J. of the Center for Families, Children & The Courts 95, 99 (2005).

³⁰ Report of the American Psychological Association Presidential Task Force on Violence and the Family, at 40.

³¹ See, e.g., National Council of Juvenile and Family Court Judges, *Batterer Manipulation of the Courts to Further Their Abuse, and Remedies for Judges*, 12 Synergy No. 1 at 12 (2008); see also Leah J. Pollema, *Note: Beyond the Bounds of Zealous Advocacy: The Prevalence of Abusive Litigation in Family Law and the Need for Tort Remedies*, 75 UMKC L. Rev. 1101, 1110 (2007) (“[A]busers may use the legal system to maintain and even prolong . . . contact.”).

³² *G v. C, et al.*, Case No. 02C11161457 (Anne Arundel Cty. Cir. Ct.); see also E387.

³³ *G v. Taylor*, Case No. 02C11161393 (Anne Arundel Cty. Cir. Ct.); *G v. C, et al.*, Case No. 02C11161457 (Anne Arundel Cty. Cir. Ct.); *G v. Taylor*, Case No. 02C13178228.

³⁴ *G v. C, et al.*, Case No. 02C11161457 (Anne Arundel Cty. Cir. Ct.).

³⁵ *G v. C et al.*, Case No. 02C11161457 (Anne Arundel Cty. Cir. Ct.).

single one of these cases has been dismissed. Again, scattershot litigiousness against anyone who stands up for the victim is common to batterers.

II. THE CUSTODY AND DIVORCE COURT’S UNSUPPORTED AND HIGHLY PREJUDICIAL CHARACTERIZATION OF MS. C IRREPARABLY INFECTED THE TRIAL BELOW.

A. The October 2010 Bench Opinion From the Parties’ Custody and Divorce Proceeding Unfairly Demonizes Ms. C.

In its 2010 opinion on custody, the custody and divorce court discounted Ms. C’s well-founded concerns that the Mr. G posed a risk to their daughter’s [“M”] safety:

This is just part of the myriad of unfounded accusations made by [Ms. C] against [Mr. G]. [Ms. C] has continuously made accusations against [Mr. G], to anyone who would listen, of rape, pedophilia, possession of child pornography, child abuse, and other inappropriate conduct with and around the minor child. There is no credible evidence to support any of these allegations.³⁶

The court used his opinion to unnecessarily expound on Ms. C’s purported motives, writing:

[T]he only excuse provided for [Ms. C] is that *this is an extreme response by someone who feels she is a victim . . .* [T]he Court does not accept this as a valid justification, and finds [Ms. C’s] conduct *calculated, malicious, and unacceptable . . .*³⁷

And accusing her of manipulation:

Ms. C used tactics to manipulate the judicial system, limit [Mr. G’s] access to the minor child, and damage [his] reputation.³⁸

Amici submit that the record contradicts the divorce trial judge's characterization of Ms. C as having made “unfounded accusations” and as “malicious.” Rather, the record demonstrates numerous objective facts that demonstrate objective cause for

³⁶ E479.

³⁷ E487-488 (emphasis added).

³⁸ E483.

concern about this child's safety in her father's care and that objective third parties shared that concern.

Both Mr. G and the court below acknowledged that Ms. C found online "sex chats" with and about minors on Mr. G's computer.³⁹ Mr. G did not manage to provide an explanation regarding this discovery for over one year.⁴⁰ That child pornography was also discovered on Mr. G's computer was similarly undisputed, as was the fact that Mr. G kept a large collection of adult pornography on his computer, which even the custody and divorce court allowed could be a reasonable source of concern for Ms. C.⁴¹ However, the court ultimately chose to credit Mr. G's retained expert witness, who concluded that the child pornography did not belong to him,⁴² over a forensic computer expert Maryland State Police Trooper's contrary testimony on Ms. C's behalf.⁴³

Further, on October 13, 2008, a child psychologist interviewed M and reported to Ms. C that "[M] had spoken of sexual abuse by her father."⁴⁴ In response to this alarming report, and on the advice of her lawyer,⁴⁵ Ms. C relayed the information to the police, who directed her to call Child Protective Services (CPS).⁴⁶ After an investigation, CPS directed Mr. G to stop showering with 4-year-old M.⁴⁷

In light of these disturbing signs, each either raised or validated by professionals, the record fails to support the characterization of Ms. C's actions as malicious. On the contrary, each of the reports she made and steps she took were *at the direction of*

³⁹ E682; E168.

⁴⁰ E682.

⁴¹ E58; E687.

⁴² E482.

⁴³ E688.

⁴⁴ E57; *see also* E417.

⁴⁵ E418-419.

⁴⁶ *See Amici App.* 13-14.

⁴⁷ E333 (Q: [D]o you recall an investigation in Anne Arundel County Child Protective Services? A: Yes, absolutely. Yes. Q: And one of their recommendation[s] was that you cease showering with the child? A: I remember talking about that with the social worker).

independent professionals.⁴⁸ The custody and divorce court suggested otherwise, painting Ms. C as a woman on a vendetta. Objectively considered, *amici* suggest that the facts actually show a concerned mother acting upon the advice of those she thought she could rely on to try to keep her daughter safe: her attorney and a child psychologist. As Ms. C testified, what drove her actions “was always the safety of our daughter.”⁴⁹

B. The Custody and Divorce Court’s Prejudicial Findings Became the Framework for the Jury’s Consideration of the Case.

In the tort case, the court below adopted uncritically the custody and divorce court’s findings and used them to frame the tort case. On the first day of trial, the judge read a partially redacted version of the bench opinion. He directed the jury that the opinion contained “*binding factual rulings*”⁵⁰ that the custody and divorce judge had found that Ms. C had “provided no excuse for her actions towards Mr. G , and the only excuse was that this was an extreme response by someone who feels she is a victim.”⁵¹

Therefore, the jury was told that it *had to accept that* Ms. C was a self-anointed victim who had made baseless, malicious allegations in order to manipulate the court and punish Mr. G . After this directive, it is difficult to imagine how the jury could objectively assess the evidence in the record, even though much of it suggested just the opposite: that Ms. C was a battered mother who feared her ex-husband and had

⁴⁸ The correlation between a history of perpetrating adult domestic violence and victimization of children has been proven by extensive empirical research. *See generally*, Lundy Bancroft & Jay Silverman, *THE BATTERER AS PARENT* (2d Ed., 2012). Indeed, batterers present a significantly elevated risk of sexually abusing a child. *Id.* at 107-122.

⁴⁹ E444. Section II.C, *infra*, discusses the dynamics of custody litigation in which mothers allege a risk of child sexual abuse from the father, sometimes resulting in negative portrayals of such mothers.

⁵⁰ E53 (emphasis added).

⁵¹ E58.

valid concerns for her daughter, while Mr. G was a father who employed a continuum of methods to harm, intimidate and control his ex-wife. In effect, Ms. C was denied the ability to present her defense to an objective fact-finder, a core element of a fair trial.

C. Both Trial Courts' Rulings Are In Keeping with Institutional Biases in Family Court Litigation.

While a trial court's skepticism about a mother's allegations of abuse merits some deference, the literature reveals that, faced with a history of domestic violence, hostility to mothers who allege a father is dangerous to a child is troublingly common. Numerous scholars have found that "the family court system has not been a refuge for battered women and their children."⁵² Indeed, a report prepared for the United Nations found that United States family courts reveal "ample evidence that being a victim of domestic violence actually places women at a disadvantage in custody and visitation proceedings."⁵³ The custody and divorce court's characterization of Ms. C as "someone who considers herself a victim" – despite a prior clear and convincing adjudication that she *was* "a victim" – is emblematic of this hostile response to women who bring abuse concerns to the family courts.

⁵² Peter G. Jaffe, Nancy K. D. Lemon & Samantha E. Poisson, *Child Custody and Domestic Violence: A Call for Safety and Accountability* 36 (2003); see also Joan Meier, *Domestic Violence, Child Custody, and Child Protection: Understanding Judicial Resistance and Imagining the Solutions*, 11 Am. U. J. Gender Soc. Pol'y & L. 657 (2003); Karen Czapanskiy, *Domestic Violence, the Family, & the Lawyering Process: Lessons from Studies on Gender Bias in the Courts*, 27 Fam. L. Q. 247, 255-56 (1993); Daniel G. Saunders, *Child Custody & Visitation Decisions in Domestic Violence Cases: Legal Trends, Risk Factors, & Safety Concerns* 4 (Rev. 2007).

⁵³ Goldfarb, *supra* at 9; Peter G. Jaffe & Robert Geffner, *Child Custody Disputes and Domestic Violence: Critical Issues for Mental Health, Social Service, and Legal Professionals, in Children Exposed to Marital Violence: Theory, Research, and Applied Issues* 381 (George W. Holden et al. eds., 1998) (describing a "no win" situation for many battered women in custody litigation because they are often blamed if they fail to protect their children, but accused of "alienating" the children if they seek to protect the children by reducing contact with the alleged abuser).

A growing body of research has found that family courts are not only prone to ignore abuse allegations but are punitive toward women who bring them in the context of custody litigation. Several independent studies of custody evaluators and family courts have similarly documented a bias against abuse allegations and defensiveness on behalf of accused fathers that is often not consistent with objective assessment of the evidence and children's risks.⁵⁴

In addition, in a preliminary study of custody and abuse opinions in cases where parental alienation had been alleged, *amicus* DV LEAP found that fathers won the vast majority of these cases even where abuse of various kinds was alleged. In a database of 240 published opinions, fathers won 73% of cases where mothers had alleged domestic violence, 69% of cases where mothers had alleged child abuse, and 80% of cases where mothers had alleged child sexual abuse. Most strikingly, *even where courts validated the abuse allegations against the fathers, fathers received a custody outcome in their favor over 40% of the time.* Child sexual abuse allegations were not only disbelieved, but resulted in a switch of custody from mother to the accused father in over 80% of such cases.⁵⁵

⁵⁴ Saunders, D., Faller, K. & Toman, R. (2011). *Child Custody Evaluators' Beliefs About Domestic Abuse Allegations: Their Relationship to Evaluator Demographics, Background, Domestic Violence Knowledge and Custody-Visitation Recommendations*, Final Technical Report submitted to the National Institutes of Justice; Davis, MS., O'Sullivan, C.S., Susser, K., & Fields, M.D. (2011), *Custody Evaluations When There Are Allegations of Domestic Violence: Practices, Beliefs, and Recommendations of Professional Evaluators*, Final Report submitted to the National Institute of Justice, Award # 2007-WG-BX-0001, Doc. # 234465.

⁵⁵ These findings are consistent with other research and widespread observations. See George Washington University Proposal to National Institute of Justice (NIJ-2014-3749), *Child Custody Outcomes in Cases Involving Parental Alienation and Abuse Allegations* (April, 2014) (on file with counsel Joan Meier) (overview of the research); Slot, K.Y., Cuthbert, C., Mesh, C.J., Driggers, M.G., Bancroft, L. and Silverman, J., *Battered Mothers Speak Out: Participatory Human Rights Documentation as a Model for Research and Activism in the United States*. *Violence Against Women* 11: 1367-1394 (2005); Bemiller, M., *When Battered Mothers Lose Custody: A Qualitative Study of Abuse at Home and in the Courts*, 5 *Journal of Child Custody*, 228-253 (2008); Meier, (Continued...)

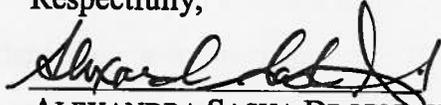
While it is theoretically possible that all of the women who lost these cases were pathologically or vengefully fabricating abuse claims, the striking consistency of negative outcomes for mothers where they (or their children) allege abuse against fathers, often even when the abuse is validated, suggests a more nuanced explanation. Considering the third-party corroborations of Ms. C's concerns for her daughter and herself, and Mr. G's history of extreme coercive control and abuse, it is at least worth considering whether the custody and divorce court's opinion was—consistent with the disturbing trends in family courts—fueled by a negative reaction to Ms. C's allegations rather than objective fact-finding. The court below nonetheless permitted this bench opinion to frame the tort trial and breathe life into Mr. G's case. If *amici's* concerns about the custody adjudication are well taken, the tort trial's fundamental fairness may have been fatally compromised.

CONCLUSION

The exclusion of evidence regarding Mr. G's abuse and Ms. C's resulting fear, and the prejudicial, troubling portrayal of Ms. C which permeated the tort trial, are both consistent with the systemic biases victims face in litigation against their abusers. The court's rulings virtually required the jury to prejudge Mr. G's claims while disabling Ms. C from refuting them. The decision below should be reversed.

2003; Morrill, A.C., Dai, J., Dunn, S., Sung, I., and Smith, K., *Child Custody and Visitation Decisions When the Father has Perpetrated Violence against the Mother*, *Violence Against Women* 11:8, 1076-1107 (2005).

Respectfully,



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Dated: September 2, 2014

(Font: Times New Roman, 13 point font)

Maryland Code, Family Law § 4-506

Hearing

(a) A respondent under § 4-505 of this subtitle shall have an opportunity to be heard on the question of whether the judge should issue a final protective order.

Contents of temporary protective order

(b)(1)(i) The temporary protective order shall state the date and time of the final protective order hearing.

(ii) Except as provided in § 4-505(c) of this subtitle, or unless continued for good cause, the final protective order hearing shall be held no later than 7 days after the temporary protective order is served on the respondent.

(2) The temporary protective order shall include notice to the respondent:

(i) in at least 10-point bold type, that if the respondent fails to appear at the final protective order hearing, the respondent may be served by first-class mail at the respondent's last known address with the final protective order and all other notices concerning the final protective order;

(ii) specifying all the possible forms of relief under subsection (d) of this section that the final protective order may contain;

(iii) that the final protective order shall be effective for the period stated in the order, not to exceed 1 year or, under the circumstances described in subsection (j)(2) of this section, 2 years, unless the judge extends the term of the order under § 4-507(a)(2) of this subtitle or the court issues a permanent order under subsection (k) of this section; and

(iv) in at least 10-point bold type, that the respondent must notify the court in writing of any change of address.

Issuance of final protective order

(c)(1) If the respondent appears before the court at a protective order hearing or has been served with an interim or temporary protective order, or the court otherwise has personal jurisdiction over the respondent, the judge:

(i) may proceed with the final protective order hearing; and

(ii) if the judge finds by clear and convincing evidence that the alleged abuse has occurred, or if the respondent consents to the entry of a protective order, the judge may grant a final protective order to protect any person eligible for relief from abuse.

(2) A final protective order may be issued only to a person who has filed a petition under § 4-504 of this subtitle.

(3)(i) Subject to the provisions of subparagraph (ii) of this paragraph, in cases where both parties file a petition under § 4-504 of this subtitle, the judge may issue mutual protective orders if the judge finds by clear and convincing evidence that mutual abuse has occurred.

(ii) The judge may issue mutual final protective orders only if the judge makes a detailed finding of fact that:

1. both parties acted primarily as aggressors; and
2. neither party acted primarily in self-defense.

Scope of final protective order

(d) The final protective order may include any or all of the following relief:

- (1) order the respondent to refrain from abusing or threatening to abuse any person eligible for relief;
- (2) order the respondent to refrain from contacting, attempting to contact, or harassing any person eligible for relief;
- (3) order the respondent to refrain from entering the residence of any person eligible for relief;
- (4) where the person eligible for relief and the respondent are residing together at the time of the abuse, order the respondent to vacate the home immediately and award temporary use and possession of the home to the person eligible for relief or, in the case of alleged abuse of a child or alleged abuse of a vulnerable adult, award temporary use and possession of the home to an adult living in the home, provided that the court may not grant an order to vacate and award temporary use and possession of the home to a nonspouse person eligible for relief unless the name of the person eligible for relief appears on the lease or deed to the home or the person eligible for relief has shared the home with the respondent for a period of at least 90 days within 1 year before the filing of the petition;
- (5) order the respondent to remain away from the place of employment, school, or temporary residence of a person eligible for relief or home of other family members;
- (6) order the respondent to remain away from a child care provider of a person eligible for relief while a child of the person is in the care of the child care provider;
- (7) award temporary custody of a minor child of the respondent and a person eligible for relief;
- (8) establish temporary visitation with a minor child of the respondent and a person eligible for relief on a basis which gives primary consideration to the welfare of the minor child and the safety of any other person eligible for relief. If the court finds that the

safety of a person eligible for relief will be jeopardized by unsupervised or unrestricted visitation, the court shall condition or restrict visitation as to time, place, duration, or supervision, or deny visitation entirely, as needed to guard the safety of any person eligible for relief;

(9) award emergency family maintenance as necessary to support any person eligible for relief to whom the respondent has a duty of support under this article, including an immediate and continuing withholding order on all earnings of the respondent in the amount of the ordered emergency family maintenance in accordance with the procedures specified in Title 10, Subtitle 1, Part III of this article;

(10) award temporary use and possession of a vehicle jointly owned by the respondent and a person eligible for relief to the person eligible for relief if necessary for the employment of the person eligible for relief or for the care of a minor child of the respondent or a person eligible for relief;

(11) direct the respondent or any or all of the persons eligible for relief to participate in professionally supervised counseling or a domestic violence program;

(12) order the respondent to pay filing fees and costs of a proceeding under this subtitle; or

(13) award temporary possession of any pet of the person eligible for relief or the respondent.

Review of open and shielded records

(e)(1) Before granting, denying, or modifying a final protective order under this section, the court shall review all open and shielded court records involving the person eligible for relief and the respondent, including records of proceedings under:

(i) the Criminal Law Article;

(ii) Title 3, Subtitle 15 of the Courts Article; and

(iii) this article.

(2) The court's failure to review records under this subsection does not affect the validity of an order issued under this section.

Surrender of firearms by respondent

(f) The final protective order shall order the respondent to surrender to law enforcement authorities any firearm in the respondent's possession, and to refrain from possession of any firearm, for the duration of the protective order.

Return of minor child to custodial parent

(g) If the judge awards temporary custody of a minor child under subsection (d)(7) of this section, the judge may order a law enforcement officer to use all reasonable and necessary force to return the minor child to the custodial parent after service of the final protective order.

Vacation of home by respondent

(h) In determining whether to order the respondent to vacate the home under § 4-505(a)(2)(iv) of this subtitle or subsection (d)(4) of this section, the judge shall consider the following factors:

- (1) the housing needs of any minor child living in the home;
- (2) the duration of the relationship between the respondent and any person eligible for relief;
- (3) title to the home;
- (4) pendency and type of criminal charges against the respondent;
- (5) the history and severity of abuse in the relationship between the respondent and any person eligible for relief;
- (6) the existence of alternative housing for the respondent and any person eligible for relief; and
- (7) the financial resources of the respondent and the person eligible for relief.

Service

(i)(1) A copy of the final protective order shall be served on the petitioner, the respondent, any affected person eligible for relief, the appropriate law enforcement agency, and any other person the judge determines is appropriate, in open court or, if the person is not present at the final protective order hearing, by first-class mail to the person's last known address.

(2) A copy of the final protective order served on the respondent in accordance with paragraph (1) of this subsection constitutes actual notice to the respondent of the contents of the final protective order. Service is complete upon mailing.

Duration of relief granted

(j)(1) Except as provided in paragraphs (2) and (3) of this subsection, all relief granted in a final protective order shall be effective for the period stated in the order, not to exceed 1 year.

(2) All relief granted in a final protective order shall be effective for the period stated in the order, not to exceed 2 years if:

- (i) the court issues a final protective order under this section against a respondent on behalf of a person eligible for relief for an act of abuse committed within 1 year after the date that a prior final protective order issued against the same respondent on behalf of the same person eligible for relief expires; and
 - (ii) the prior final protective order was issued for a period of at least 6 months.
- (3) A subsequent circuit court order pertaining to any of the provisions included in the final protective order shall supersede those provisions in the final protective order.

Final protective orders

- (k)(1) Notwithstanding any other provision of this section, the court shall issue a new final protective order against an individual if:
- (i) the individual was previously a respondent under this subtitle against whom a final protective order was issued;
 - (ii) the individual was convicted and served a term of imprisonment of at least 5 years under § 2-205, § 2-206, § 3-202, § 3-303, § 3-304, § 3-305, § 3-306, § 3-309, § 3-310, § 3-311, or § 3-312 of the Criminal Law Article for the act of abuse that led to the issuance of the final protective order; and
 - (iii) the victim of the abuse who was the person eligible for relief in the original final protective order requests the issuance of a new final protective order.
- (2) In a final protective order issued under this subsection, the court may grant only the relief that was granted in the original protective order under subsection (d)(1) or (2) of this section.
- (3) Unless terminated at the request of the victim, a final protective order issued under this subsection shall be permanent.

Maryland Rule 8-511

Rule 8-511. Amicus curiae.

(a) Authorization to File Amicus Curiae Brief. An amicus curiae brief may be filed only:

- (1) upon written consent of all parties to the appeal;
- (2) by the Attorney General in any appeal in which the State of Maryland may have an interest;
- (3) upon request by the Court; or
- (4) upon the Court's grant of a motion filed under section (b) of this Rule.

(b) Motion and Brief.

(1) Content of Motion. A motion requesting permission to file an amicus curiae brief shall:

- (A) identify the interest of the movant;
- (B) state the reasons why the amicus curiae brief is desirable;
- (C) state whether the movant requested of the parties their consent to the filing of the amicus curiae brief and, if not, why not;
- (D) state the issues that the movant intends to raise;
- (E) identify every person, other than the movant, its members, or its attorneys, who made a monetary or other contribution to the preparation or submission of the brief, and identify the nature of the contribution; and
- (F) if filed in the Court of Appeals to seek leave to file an amicus curiae brief supporting or opposing a petition for writ of certiorari or other extraordinary writ, state whether, if the writ is issued, the movant intends to seek consent of the parties or move for permission to file an amicus curiae brief on the issues before the Court.

(2) Attachment of Brief. Copies of the proposed amicus curiae brief shall be attached to two of the copies of the motion filed with the Court.

Cross reference: See Rule 8-431 (e) for the total number of copies of a motion required when the motion is filed in an appellate court.

(3) Service. The movant shall serve a copy of the motion and proposed brief on each party.

(4) If Motion Granted. If the motion is granted, the brief shall be regarded as having been filed when the motion was filed. Within ten days after the order granting the motion is filed, the amicus curiae shall file the additional number of briefs required by Rule 8-502 (c).

(c) Time for Filing.

(1) Generally. Except as required by subsection (c)(2) of this Rule and unless the Court orders otherwise, an amicus curiae brief shall be filed at or before the time specified for the filing of the principal brief of the appellee.

(2) Time for Filing in Court of Appeals.

(A) An amicus curiae brief may be filed pursuant to section (a) of this Rule in the Court of Appeals on the question of whether the Court should issue a writ of certiorari or other

extraordinary writ to hear the appeal as well as, if such a writ is issued, on the issues before the Court.

(B) An amicus curiae brief or a motion for leave to file an amicus curiae brief supporting or opposing a petition for writ of certiorari or other extraordinary writ shall be filed at or before the time any answer to the petition is due.

(C) Unless the Court orders otherwise, an amicus curiae brief on the issues before the Court if the writ is granted shall be filed at the applicable time specified in subsection (c)(1) of this Rule.

(d) Compliance with Rules 8-503 and 8-504. An amicus curiae brief shall comply with the applicable provisions of Rules 8-503 and 8-504.

(e) Reply Brief; Oral Argument; Brief Supporting or Opposing Motion for Reconsideration. Without permission of the Court, an amicus curiae may not (1) file a reply brief, (2) participate in oral argument, or (3) file a brief in support of, or in opposition to, a motion for reconsideration. Permission may be granted only for extraordinary reasons.

(f) Appellee's Reply Brief. Within ten days after the filing of an amicus curiae brief that is not substantially in support of the position of the appellee, the appellee may file a reply brief limited to the issues in the amicus curiae brief that are not substantially in support of the appellee's position and are not fairly covered in the appellant's principal brief. Any such reply brief shall not exceed 15 pages.

Court of Special Appeals
Ms. C v. Mr. G, No. 1259, September Term 2013

CERTIFICATE OF SERVICE

I, John C. Kruesi, Jr., being duly sworn according to law and being over the age of 18, upon my oath depose and say that:

Counsel Press was retained by CROWELL & MORING LLP, Attorneys for Amici Curiae, to print this document. I am an employee of Counsel Press.

On the **2nd Day of September, 2014**, I served the within **Brief for Amici Curiae** upon:

Mr. G
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Counsel for Appellant

via Express Mail, by causing 2 true copies, enclosed in a properly addressed wrapper, to be deposited in an official depository of the U.S. Postal Service.

Unless otherwise noted, 2 copies of the brief, along with a motion for leave are being sent to the Court on the same date as above via hand delivery. The remaining 13 copies for the Court will be sent upon request of counsel.

September 2, 2014

John C. Kruesi, Jr.
Counsel Press