

IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE

Submitted on Briefs August 2, 2013

F. A. B.

v.

D. L. B.

Appeal from the Humphreys County Chancery Court

No. CH-03-237 Robert E. Burch, Chancellor

No. M2012-01100-COA-R3-CV - Filed October 29, 2013

This post-divorce appeal involves the suspension of parenting time. The mother made repeated allegations that the father was abusing their child; the father denied all of the allegations. After numerous proceedings, the father asserted that the mother was coaching the child to make false allegations of abuse and asked the trial court to terminate the mother's parenting time. The trial court ordered a psychological evaluation of both parties and the child. After considering the evaluations and substantial testimony, the trial court determined that the father had committed no abuse and found that the child would be emotionally harmed by continued contact with the mother. The trial court then suspended the mother's parenting time and enjoined all contact with the child until the mother obtains mental health counseling and treatment. The mother appeals. Based on our careful review of the record, we affirm.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Chancery Court is Affirmed

HOLLY M. KIRBY, J., delivered the Opinion of the Court, in which ALAN E. HIGHERS, P.J. W.S., and J. STEVEN STAFFORD, J., joined.

Judy A. Oxford, Franklin, Tennessee for Petitioner/Appellant F. A. B.

David D. Wolfe, Dickson, Tennessee for Respondent/Appellee D. L. B.

OPINION

FACTS AND PROCEEDINGS BELOW

Petitioner/Appellant F. A. B. (“Mother”) and Respondent/Appellee D. L. B. (“Father”) married in 2000. In 2001, the parties had a son (“Son”), the child at issue in this appeal. The parties have no other children, but Mother has a daughter from a previous relationship (“Daughter”), who was an adult at the time of the proceedings below. The record indicates that Daughter was sexually abused by her biological father when she was four years old.¹

The parties’ initial separation occurred in 2003. At some point after they separated, Mother learned that Father planned to ask the divorce court to designate him as Son’s primary residential parent. While the divorce litigation was pending, Mother began to suspect that Father was abusing Son. When Son, then two years old, returned from parenting time with Father, Son allegedly said: “Daddy no change my diaper. Daddy hurt my butt.” Daughter apparently became concerned that Father had abused Son and reported her concerns to Mother. Mother responded by taking Son to the local hospital for a rape test. The hospital refused to perform a rape test on the child.

After that, in November 2003, Mother abruptly left the state with Son without telling Father. Father was unable to locate them for several months. In Mother’s absence, the divorce court entered a default judgment against Mother which included a final decree of divorce and a parenting plan designating Father as the primary residential parent. The parenting plan gave Mother standard alternate parenting time every other weekend and alternate holidays. It later turned out that Mother had brought Son to a women’s shelter in Michigan. When Father finally located them in Michigan in February 2004, Mother was arrested. Mother was subsequently charged with custodial interference and served eight days in jail.

Three days after Mother was released from jail, she filed a report of suspected abuse with the Tennessee Department of Children’s Services (DCS). The DCS report stated that Mother had “concerns” that Father was sexually abusing Son and that “people in the church drugged her and then abused her children” while she was in a semiconscious, dreamlike state.² Mother said that she came to this realization after she received therapy at the Michigan women’s shelter.

¹Daughter’s biological father is currently incarcerated.

²Mother also claimed that an unknown person had sexual intercourse with her while she was drugged. She said that she had no memory of such intercourse, but came to the conclusion that it had occurred when she “woke up with vaginal wetness and a bruised pubic bone that led me to believe someone had.”

In May 2004, in response to Mother's report of suspected abuse, DCS interviewed Daughter, who was 12 years old at the time. The DCS report of the interview stated that Daughter said that she did not know what happened to Son; she did not allege that Father had abused her. The report noted that Daughter confirmed that she was abused by her biological father, who was subsequently incarcerated.

DCS interviewed Son as well, who at the time was approximately 3 years old. Son denied that anyone, including Father, had ever inappropriately touched his private parts. In the case conference that followed, DCS representatives suggested to Mother that she obtain a psychological evaluation. It appears that no further action was taken at this time.

During the next several years under the parenting plan, the parties were frequently in court on a variety of disputes, such as contempt proceedings for alleged violations of the parenting plan. Many involved Mother's alleged refusal to pay child support and Father's alleged actions to withhold Son from the child's parenting time with Mother. The record does not indicate any abuse allegations during this time period.

In the summer of 2009, abuse allegations against Father surfaced again. Apparently during Mother's summer 2009 parenting time, while several contempt and child support issues were pending, Mother sought to extend her parenting time, allegedly at Son's request. Mother claimed that Son told her that Father slapped him, would not let him leave the table until he ate his vegetables, and left him in a car unattended. Father declined to extend Mother's parenting time with Son. Despite the allegations, Mother returned Son to Father at the end of her parenting time.

The allegations of abuse soon escalated. During Mother's next scheduled parenting time in August 2009, she claimed, Son told her that Father left the child in his bedroom for long periods of time with only bread and water and a cup to use as a toilet. After this disclosure, Mother claimed, Son "just seemed to want to tell me more and more, and I asked him, I said, 'Has your dad ever touched your private parts?'" She claimed that Son said "yes." Mother said that she then asked Son if Father had also let other people touch him; she said that Son also responded affirmatively to that inquiry. Mother said that she did not ask Son any further questions at that time. She returned Son to Father's home the next day.

Mother's next parenting time brought more allegations. When Mother first saw Son for her parenting time, the child had a knot on his forehead; this prompted Mother to take Son to the local hospital for examination. At the hospital, Son apparently indicated that Father caused the knot on his forehead, so the hospital contacted the police and DCS to report the possible abuse. DCS began investigating these abuse allegations.

In the wake of the hospital's report to authorities, Mother filed a dependency and neglect petition in the Juvenile Court of Putnam County alleging abuse and neglect by Father.³ As a result, pending resolution of the allegations, a juvenile court apparently entered a protective order permitting Father only supervised parenting time.⁴ Despite the parenting plan's designation of Father as Son's primary residential parent, after the juvenile court protective order was entered, Son apparently began living with Mother and Father had only limited, supervised parenting time with the child.

In August 2009, the Child Advocacy Center (CAC) interviewed Son and Daughter about the alleged abuse. At the time of the interviews, Son was approximately eight years old. During his interviews, Son extolled the benefits of his parenting time with Mother; he said that he and Mother "never have a boring day" and there was nothing about his Mother that he did not like. Conversely, Son described Father as "really mean" and said that Father "never acts nice." Son reported that if he did not say what Father wanted him to say, Father would lock him in his bedroom for five days with only bread and water. Later in the interviews, Son clarified that these incidents took place after the parties' divorce when Son lived in Waverly with Father, when Son was four or five years old. During the same time period at the Waverly house, Son said, Father stuck his penis (termed "bad spot" by Son) into Son's bottom. Son said that when this happened, he yelled out. Son also asserted that Father let "complete strangers" touch him "inappropriately on my bad spot and on my bottom" while he was trying to sleep. He claimed that Father allowed others to touch or rub Son's genitalia more times than he could count; the child said that the alleged incidents often involved people from Father's church, approximately 15 men and one woman. Son stated that he had not told anyone about these incidents until he finally told Mother a few weeks before the interviews. By the time of the CAC interviews, Son said, Father was no longer hurting him.

Daughter was also interviewed at the CAC. Daughter said that while they all lived in the Waverly house, when Son was one or two years old, she saw Father touch Son's private parts while they were in Father's bed. Daughter claimed that Father forced her to have anal sex

³The appellate record does not contain a copy of this petition, but it is referenced in other documents in the record. We note that all other issues up to this point had been heard by the Humphreys County Chancery Court.

⁴Mother's petition apparently set off an extended period of confusion as to which county had jurisdiction over the parties' disputes, with varying assertions about the county in which the alleged abuse occurred; in Humphreys County, where the petition was filed, in White County, or in Putnam County where her petition was filed. Some of Mother's pleadings in the appellate record refer to a protective order entered by the Montgomery County Juvenile Court, others refer to a protective order entered by the Putnam County Juvenile Court. The appellate record in this case does not include a copy of the order. The lack of clarity in the record on this question does not affect our analysis of the issues on appeal.

with him “almost every night for a while.” At the time, Daughter said, Father threatened that if she told anyone of his actions she would never see Son again or he would kill her mother or her brother. Daughter told the interviewer that the last incident occurred about six years prior to the interview, shortly before the parties separated, when Daughter was 11 years old. Daughter claimed that she told Mother about Father’s sexual abuse of her after Son commented that his “butt hurt” after seeing Father, shortly before Mother fled to Michigan with the children in 2003.

At the hospital, Son was subjected to an invasive physical examination, to investigate the report of sexual abuse. The result of the examination was normal; the examiner “neither rule[d] in nor rule[d] out the possibility of sexual conduct.”

In August 2009, in response to Mother’s petition, Father filed a motion for contempt that included a request to suspend Mother’s parenting time with Son. The motion included allegations that Mother failed to return Son to Father’s home after the child’s regular parenting time with Mother, that Mother falsely reported to the police that Father had abused Son, and that Mother made derogatory comments to Son about Father and his family.

In November 2009, Father filed a motion to end Mother’s court-ordered parenting time with Son, permanently. The motion asserted that Mother had “flagrantly violated this Court’s [o]rder and . . . made numerous false and malicious allegations” and that she had filed a petition in the juvenile court in another county in order to circumvent the trial court’s parenting plan. Father alleged that Mother’s conduct was “so detrimental to the child’s welfare and emotional state that her right to visit with or have contact with the child should be permanently terminated.”

Father’s motion was met by Mother’s motion, filed in January 2010, to enjoin Father from having any contact with Son. Mother’s motion described in graphic detail the sexual abuse that Son allegedly recounted to Mother, including sodomy by Father and numerous others, including a pastor at Father’s church. Mother’s motion also attached summaries of the CAC interviews with Son and Daughter about the alleged abuse. The motion stated that DCS authorities in two different counties were investigating the abuse allegations and asked the trial court to enter an emergency restraining order enjoining Father from any contact with Son. It also alleged a material change in circumstances warranting a change in the designation of primary residential parent to Mother. On the day the motion was filed, Mother’s counsel asked the trial court to grant *ex parte* relief against Father; the request for *ex parte* relief was denied.

In February 2010, Father filed a motion to amend his petition to add a request to hold Mother in criminal contempt of court for raising the same allegations of sexual abuse repeatedly, in

courts in different counties, even though the allegations had been investigated and found to be untrue.⁵ Father's petition continued to ask the trial court to either eliminate all of Mother's contact with the child or require that any contact be closely supervised.

The trial court held an evidentiary hearing on all pending matters on non-consecutive days, May 20, 2010 and August 2, 2010. Over 18 witnesses testified during these two days, including Son, who was nine years old at the time of the hearing.

In his testimony, Son said that he recalled the abuse he suffered some six years earlier, when he was three years old. Asked about the fact that he did not recount any abuse to the authorities who spoke to him at the time, Son first said that he could not recall what he told them during the first investigation but then added that he was too embarrassed at that time to tell them about the abuse. Son said that, about two months prior to the trial, he learned from Mother that Father had threatened Mother when the initial divorce action was pending, and that Father's threats were what prompted Mother to flee to Michigan around the time the initial abuse accusations were allegedly made.

When he was eight years old in the summer of 2009, Son said, he finally disclosed to Mother that Father was abusing him because he "just couldn't live with it anymore." Son could not recall whether he first brought up the topic of sexual abuse or whether Mother brought it up first during that conversation. Son adamantly denied that Mother prompted him to say or do anything.

Asked about the abuse, Son testified that Father repeatedly slapped and punched him out of anger. Contrary to his prior statement that Father's abuse stopped when he was five years old, Son testified that Father abused him every day, three to five times a day, up until the day he went to live with Mother in August 2009. Son could not remember specifically where on his body he was hit. He said that he did not tell anyone about Father's alleged behavior, except Mother in that single instance. Son claimed that Father threatened weekly that he would kill Son's family if Son told anyone about the physical abuse. Son said that Father also made other threats, but Son could not remember them. Son claimed that his stepmother had slapped him as well, twice.

In addition to the slapping and punching, Son testified that Father sexually abused him. Son claimed that he first told Mother about Father's sexual abuse in the summer of 2009; he explained that he did not tell her about it before then because he was embarrassed. Son testified that Father "put his penis . . . in my bottom" more than ten times. Son said that he

⁵Father's amended petition asserted that the juvenile courts in neighboring counties in which Mother had filed dependency and neglect petitions had relinquished jurisdiction in favor of the trial court below.

never bled from this abuse, though he would hurt for 2-3 hours afterward. Later in his testimony, Son asserted that Father put Son's penis in his mouth. Son was asked about the fact that, in August 2009, Son had denied any such abuse by Father in response to questions about oral sex by the police. Son responded, "anything is possible." Son could not clearly remember the exact time period in which the sexual abuse occurred, but believed it was when he was in third grade.⁶ Son testified that Father always left Son's bedroom door open at night and typically abused him every night in his bedroom when Son was asleep or about to fall asleep. Son said he did not scream or tell Father no; he said that he yelled to his stepmother for help but not "that loud." As with the other abuse, Son said that Father threatened him if he ever told anyone about the sexual abuse. Son could not specifically recall what the threats were, but said they scared him.

Son testified that numerous other persons abused him as well. Son said that, up until the summer of 2009, he was abused at hotels by approximately fifteen persons whose names he did not know.⁷ Son stated that this continued into the summer of 2009. Son testified that, every other day, Father made him take pills that made him "sick." Father drove Son to hotels while he was asleep, and he would be awakened by the unnamed persons abusing him. He said that he never cried for help "because it was in the middle of the night, no one would usually care, [so] I would just try to go back to sleep." Son also said that he saw Father exchange money for drugs with the strangers.⁸ Asked how it felt to be punched and slapped by Father 3-5 times a day, sexually abused by Father every night, and frequently drugged and sexually abused by strangers in hotels, Son responded, "[B]ack then I didn't really know anything was wrong, I was still just a kid, I thought every kid's dad did that to 'em."

Son testified that, despite the alleged abuse, since he began living with Mother, his supervised visitation with Father had gone well. He said that he got along with Father and in their visits they went to the park and played football together. Son said he enjoyed being around Father and that they had fun, provided that his visits with Father were supervised.

Son explained he made past inconsistent statements to the police and DCS because he was "too embarrassed to tell them what was going on." He acknowledged that, in August 2009, he did not reveal all of the sexual abuse that had occurred because he was not yet brave

⁶At the time of the hearing, Son was in fourth grade.

⁷Son recognized one alleged abuser as a member of Father's church. Son first said he was four years old when the hotel abuse occurred, but later said that he could not remember when it occurred because "I was usually asleep anyway."

⁸Son conceded that, after the sexual abuse allegations arose, Mother told him that Father used to take "too many pain pills."

enough to tell the truth. Son asserted repeatedly that Mother had “never” tried to get him to say things that were not true, but in contrast Father would “always tell me to, like, act happy and he would tell me to tell a lie.” Asked about specific examples, Son could not remember any, but maintained that Father told him to lie and say the abuse never happened.

Mother testified at length. When the abuse allegations at issue arose, Mother explained, the parenting arrangement consisted of her receiving every other weekend residential parenting time and two weeks in the summer. In summer 2009, she said, at the end of Son’s two weeks with Mother, Son told her that he did not want to go back to Father’s home. When Mother conveyed that request, Father refused. Mother said that, at that point, Son told her, “You just don’t realize how bad it is for me there.” Mother said she refrained from doing anything at that time; she said that she “was still weighing between the seriousness of the complaints . . . because my daughter, I’ve always known – I’ve always assumed [Son] was probably not in a good environment, but I did not know to what extent.”

The next time Son had residential parenting time in Mother’s home, Mother said, he made more serious allegations against Father. She testified that, as soon as Son got in Mother’s car, he told her that Father had left him alone in his bedroom for days. The next day, Mother said, Son “just seemed to want to tell me more and more, and I asked him, I said, ‘Has your dad ever touched your private parts?’ ” She explained that she asked Son this question out of the blue because Daughter had claimed that she was “horribly abused by this man and that she had witnessed him inappropriately touching [Son].” When she asked Son this question, Mother said, the child said yes and started to cry. Mother then asked Son if Father had let anyone else touch him inappropriately. Son told Mother that Father had let others touch him but did not go into any detail. Mother said that she chose not to push Son to reveal any more because, “having been through the system” with Daughter, Mother “knew that that was inappropriate.” Mother testified that she told no one about Father’s alleged abuse at that time and returned Son to Father as scheduled.

During Mother’s next regularly scheduled residential parenting time with Son, Mother said, the DCS interviewed both Son and Daughter. At the end of her scheduled parenting time, Mother returned Son to Father’s home. When Son came to Mother’s home two weeks later for Mother’s regular residential parenting time, Mother testified, Son told her that Father beat him on the head because Father found out about the abuse allegations. Mother took Son to the hospital for the personnel to examine the knot on Son’s forehead; in this visit, Mother claimed, the hospital confirmed that Son had sustained abuse, based on Son’s statements to hospital personnel.

Armed with the hospital’s report to authorities of possible abuse, Mother then filed her dependency and neglect petition in the Putnam County Juvenile Court, alleging abuse. As a

result, Mother got emergency custody of Son. The fact that Father still had supervised parenting time upset Son, Mother claimed. Mother testified that, at this point, she learned that Father had taken Son to a hotel and had allowed several men to touch the child inappropriately. Mother then persuaded Son to file a report of abuse; she explained that she “did not persuade him into what to say, but I did persuade him to tell somebody.”

After that, Mother said, Son revealed for the first time that he had been sodomized. Consequently, Son was subjected to another physical examination for signs of abuse. Mother testified that Father’s abuse of Son continued into the summer of 2009 and “never stopped.”

Other than these severe abuse allegations, Mother said, Son was “doing great.” She said that he enjoyed school and “tested out at almost a sixth grade reading level.”

In her testimony, Mother described Father’s church as a “cult.” She maintained that she and Daughter both believe that they were raped by church members while drugged and in a semi-conscious state.

Daughter testified at the hearing as well. At the time of the hearing, she was 18 years old. In her testimony, Daughter asserted that, when she was ten to eleven years old, Father hit her and forced her to have sex with him many times. She said that she did not tell anyone at the time out of concern that “he would come after me.” Daughter also claimed that, after the parties separated, but before divorce proceedings were commenced, she saw Father inappropriately touching Son. Daughter’s report to Mother of what she allegedly saw prompted the 2004 DCS investigation and interviews.

Daughter acknowledged that, in the course of her 2004 interview with investigators, she told them that she had not actually seen anything and did not know exactly what had happened to Son but suspected that Father was raping and hurting him. She also acknowledged telling the investigators that she had had dreams that caused her to believe that members of Father’s church sexually assaulted her while she slept, but that she was not sure what really happened and did not know if Father was involved. After the initial 2004 interview, Daughter conceded, Mother told her that she needed to tell the DCS investigators that Father had raped both Daughter and Son. Consequently, in her second interview with DCS, Daughter told the investigator that Father had in fact sexually abused her by raping her six or seven times when she was 10 or 11 years old. Daughter told the DCS investigator at the time that she couldn’t remember in the initial interview exactly what Father had done because she was asleep when the abuse occurred. Daughter denied that, before the second DCS interview, Mother “helped” her remember what Father had done to her; instead, Daughter said, “I made myself remember.” Daughter confirmed that, in 2004, Mother talked to her about Mother’s dreams of being sexually assaulted by people from Father’s church.

The trial court also heard testimony from Pamela Williams, a counselor retained by Mother to counsel Son. Ms. Williams said she began counseling Son in January 2010 when the child was nine years old and had had approximately eight counseling sessions with him. In advance of the counseling, Mother told Ms. Williams that she sought therapy for Son because of physical and sexual abuse.

In the initial visit, Ms. Williams said, Son told her only that he did not like Father's parenting time with him. He explained to her, "I wouldn't let [my] momma change my diaper because my bottom was sore," that he had to go to the hospital after returning to Mother's home, and because Father locked him in his bedroom for days with only bread and water. In subsequent counseling sessions, Son told Ms. Williams that Father would "hit me and slap me and he would come in my room with no clothes on, and he would put his penis in my butt." When this happened, Son said to Ms. Williams, it caused a lot of pain and, contrary to Son's earlier testimony, sometimes bleeding. When Ms. Williams asked Son what Father's penis looked like, Son said that "it looked like all the rest." Ms. Williams asked Son how many penises he had seen. Son replied, "A lot. . . . My dad would take me to hotels and trade me for drugs." In the counseling session, Son also drew a detailed depiction of an erect male penis, said to be Father's.

Ms. Williams acknowledged that some parents influence a child to lie about abuse, but she did not believe that Mother had coached Son about Father's abuse. Ms. Williams had not met Father but believed that it would be detrimental for Father to have supervised visitation with Son during the court proceedings. She also opined that it would be psychologically damaging for Son to testify in court in Father's presence. If the child had to testify with Father in the courtroom, Ms. Williams added, she hoped "he won't be so terrified that he can't speak."

Father also testified at length. He denied that he had ever sexually abused either Son or Daughter. Father also denied that he had ever threatened either Son or Mother; he added that he is not a violent person and that threats are "not in my nature." Between 2004 and 2009, Father said, Son lived with him as the primary residential parent. Father described those four years as "good, very good." He said that during that time Son was a happy child who demonstrated no fear of him or reluctance to be around him. Father adamantly denied that he had ever harmed or threatened either Son or Daughter in any way and characterized the acts Son described in his testimony as "sickening."

Father testified about his supervised parenting time with Son after the allegations of abuse resulted in Mother obtaining emergency custody. During his time with Son, Father said, Son acted like "a normal little boy." Father said that Son hugs him when they first see each other and that Son shows no fear of coming into physical contact with him. After describing the

activities he and Son had done together during his supervised parenting time, Father submitted into evidence photographs of Son's interactions with Father depicting Son as a normal, happy child. Father also explained the knot on Son's forehead to which Mother referred in her testimony. Father said that Son ran to his bedroom in Father's home to show a home handyman an item from his karate tournament; in doing so, Son accidentally hit his head on the door frame.

The handyman present at Father's home that day corroborated that Son hit the door frame and hurt his head in the course of trying to show off a karate item. A police detective who investigated the bump on Son's head testified that there was no corroborating evidence to indicate that the bump was the result of abuse.

The trial court also heard testimony from Father's wife ("Stepmother"). Stepmother said that she is a DCS foster parent trained to look for signs of abuse. She testified that she had seen no indication that Father had ever physically or sexually abused Son. Stepmother described Son as "a very active, outgoing, friendly" child who "didn't know a stranger" and "[t]hought he could do anything." Stepmother said, however, that she saw a change in Son after he returned from his two-week residential parenting time with Mother in the summer of 2009. At that time, Stepmother said, Son was clingy toward Father, cried frequently, and was often unable to sleep.

The trial court heard from numerous other witnesses, including the person who had supervised Father's parenting time with Son during the pendency of the court proceedings. The parenting time supervisor generally saw nothing unusual about Son's behavior and saw no signs of abuse. The supervisor noted, however, that Son acted differently toward Father when Mother dropped off the child for the visit, specifically, he acted "a little standoffish" when Mother was present. Son's kindergarten teacher, his school counselor, and his babysitter all testified that they had observed nothing out of the ordinary about Son's behavior over the last few years and saw no indications of any sort of abuse.

At the conclusion this hearing, after hearing 18 witnesses, the trial court issued an oral ruling leaving in place the temporary parenting arrangement with Mother as the primary residential parent. However, the trial court's remarks conveyed skepticism about the allegations of abuse against Father and concern that the child may have been influenced to actually believe that the abuse occurred:

In this case, proof of physical and sexual abuse of this child is highly questionable. There are numerous inconsistencies. Some aspects of the allegations defy reason. Timing is highly suspicious. It does not follow, however, that the situation should revert to the original order.

The child in this case is either an extremely relaxed liar, a highly competent actor, or truly believes the allegations. The latter possibility is highly probable. Whether the allegations of sexual abuse are true or whether they are not true but the child now actually believes them to be true due to persistent suggestion, which has been agreed upon by both parties is highly possible by a persistent influential parent, the damage of returning this child to the custody of his father at this time is very real. Therefore, the status quo will be maintained pending further orders of [the] Court.

Thus, the trial court left in place the parenting arrangement with Mother as primary residential parent and Father permitted only supervised parenting time. However, the trial court ordered psychological evaluation of both parties and Son as well. It reserved the issue of contempt by Mother for failing to pay child support.

The parties were unable to agree on a psychologist to perform the court-ordered evaluations. Consequently, in May 2011, the trial court held a hearing on the issue. At the hearing, the trial court also considered Father's complaints that Mother was following Father and Son during Father's supervised parenting time. At the hearing, the person who supervised Father's visit with Son at a golf outing testified that Mother followed them as they went to the visit, and even ran a red light to keep them in sight. She testified that Son was not left alone with Father, that Father and Son appeared to get along well, and that the child gave no indication that he was fearful of Father. Mother testified that she objected to the person chosen to supervise Son's visit with Father, so she elected to accompany the child on the visit. Son testified at the hearing as well. He told the trial court that the visit supervisor left him alone with Father at one point during the visit; that scared the child so he ran away until the supervisor appeared. Son said that Mother used binoculars to observe him playing golf with Father and said that he couldn't have fun playing golf because he was so scared.

At the conclusion of the hearing, the trial court designated psychologist Victor Pestrak, Ph.D. to determine the psychological status of Son and both parties, opine on whether the alleged abuse occurred, and make custody recommendations for the trial court. The trial court expanded Father's parenting time and also enjoined Mother from being within sight during Father's parenting time.

Pursuant to the trial court's order, Father was evaluated by Dr. Pestrak in August 2011. The evaluation involved multiple types of tests, as well as an interview and self-reporting.

Mother did not immediately present to Dr. Pestrak for her evaluation, nor did she bring Son to Dr. Pestrak for his evaluation. Consequently, in early September 2011, Father filed a

motion asking the trial court to hold Mother in contempt of court for refusing to comply with the court order on psychological evaluations for Son and for her. This gave rise to another hearing, on September 23, 2011. At the hearing, Father's counsel told the trial court that Father met with Dr. Pestrak in August 2011 for his evaluation and paid for his share of Son's evaluation at that time. Mother presented evidence that her busy work schedule and financial constraints had prevented her from meeting with Dr. Pestrak for her evaluation or bringing Son to Dr. Pestrak for the child's evaluation. At the conclusion of the hearing, the trial court reserved the issue of Mother's contempt to allow Mother to schedule her appointment with Dr. Pestrak.

A few days after the hearing, Mother went to Dr. Pestrak's office. She stayed long enough to do her clinical assessment of Son for Dr. Pestrak, but did not stay long enough to complete her own evaluation. She did not bring Son to Dr. Pestrak for his evaluation.

In November 2011, Dr. Pestrak filed his report to the trial court on his evaluation of Father. At the time Dr. Pestrak's report was filed, Mother had neither completed her evaluation with Dr. Pestrak nor brought Son to Dr. Pestrak for the child's evaluation. In Dr. Pestrak's report to the trial court on Father, he reviewed the extensive testing performed for the evaluation. Dr. Pestrak's report concluded that Father "does not share a significant number of traits and behaviors of known physical child abusers" and that there was no indication of sexual interest in males or children. Overall, the report on Father concluded that "the physical and sexual abuse allegations and reports of severe negligence appear to be unfounded after investigation. Examination of these findings, along with provided background data suggest that [Father] is not at risk for inappropriate behavior with his son (or any child)."

In late November 2011, the trial court held another hearing to ascertain the parties' compliance with its orders on the required psychological evaluations. The trial court found that Mother had consistently resisted obtaining the court-ordered evaluations for herself and for Son. After the trial court reviewed Dr. Pestrak's report on his evaluation of Father, it granted Father temporary custody of Son. Father was then given the responsibility of taking Son to Dr. Pestrak for the child's evaluation. The trial court enjoined Mother from resisting the transfer of custody to Father and gave Mother alternate residential parenting time in accordance with the original parenting plan and final decree of divorce.

Thus, after the delay caused by Mother, Father brought Son to Dr. Pestrak's office in December 2011 for the child's evaluation. Son's interview with Dr. Pestrak differed drastically from the child's earlier testimony before the trial court. It also contrasted sharply with the clinical assessment of the child that Mother completed in her abbreviated visit to Dr. Pestrak.

Son told Dr. Pestrak that he was feeling “happy” and was making friends in his new school in Father’s school district. The report relates Son’s response to Dr. Pestrak’s inquiry on how things were going since he moved back in with Father, how it was living with Mother, and whether either parent abused him:

[Son] said things are going well. He said he feels he is treated fairly. When asked how he is disciplined, he said he used to get spanked with his father’s hand, but now he loses privileges. He denied any interaction with his father that upsets him. He expressed comfort, rather than discomfort, in living there.

[Son] reported some discomfort when living with mother. In addition to report[s] of her “screaming” at him if he disagreed with her, he said he felt uneasy somewhat continuously because, “I felt I always had to agree with her.”

He denies being abused in any way by either parent.

Thus, Son reported being comfortable living with Father and uneasy living with Mother because he felt pressured to always agree with her. He also denied being abused by either. Dr. Pestrak asked Son directly about the past allegations of physical and sexual abuse by Father. His report described Son’s response:

[Son] said that he was about eight years old when the allegations started. He acknowledged that he accused his father of sexually abusing him. When asked if his father did ever sexually molest him or sexually touch him, [Son] was clear in stating that this never happened. When questioned about the possibility that it happened but he may not remember it now (or perhaps would prefer to not remember it or discuss it now), he again was adamant that his father was never sexually inappropriate with him.

[Son] was then asked why he previously made these serious claims against his father. He was questioned and verified that he knew that lying was morally wrong. [Son] was asked why he was willing to lie about his father. He hesitantly replied, “I was scared of my Mom.” He added, “She would scream if I disagreed with her.” When asked for clarification, [Son] explained that his mother repeatedly told him that his father sexually abused him. If [Son] disagreed with this claim, she would “scream” at him until he stopped disagreeing (“I felt I had to agree with her.”). [Son] also claims that no one (e.g., his father) is insisting he make these current statements.

Therefore, Son told Dr. Pestrak that no one had ever sexually molested him or physically abused him. Son explained that he lied about the alleged abuse by Father because Mother insisted that the abuse occurred and “screamed” at him if he disagreed. Dr. Pestrak asked Son specifically about the knot on his forehead that resulted in a trip to the hospital and the hospital’s report to authorities of possible abuse by Father. The report recited Son’s response: “[Son] said he was running in the house. He wanted “Dwayne” [the handyman] to see his nun-chucks [sticks used as weapons in martial arts] and hit his head on the wall.”

Dr. Pestrak’s report also recited Mother’s clinical assessment of Son when she visited Dr. Pestrak’s office. Mother reported to Dr. Pestrak that she believed that Son was experiencing significant emotional distress, depression, and anxiety. Mother’s assessment contrasted sharply with Dr. Pestrak’s observation of Son’s demeanor, Son’s description of his state of mind to Dr. Pestrak, and the tests performed on Son in the course of the evaluation.

In the conclusion to Dr. Pestrak’s report on his evaluation of Son, Dr. Pestrak noted that no evaluation could definitively determine whether the alleged abuse actually occurred. With this disclaimer, the report concluded:

Overall, results indicate that [Son] is currently not experiencing any significant emotional distress, thought disorder, or effect of any trauma. [Son] is now claiming his father was never engaging in the bizarre and severe sexual and physical abuse that [Son] reported earlier. [Son] is stating that he felt coerced into making these claims at the insistence of his mother.

If [Son’s] report of coercion from his mother is true, this could be considered a form of emotional abuse which can be traumatizing to [a] child. . . .

If there is evidence or reason to believe that [Son’s] mother is continuing to claim to [Son] that he has been sexually abused by his father, it would [be] important for this to cease (given that [Son] is adamant in stating that this never occurred). . . .

(Underlining in original). Thus, Dr. Pestrak’s report on his evaluation of Son indicated that Son was not experiencing any after-effects of trauma and emphasized that Son stated repeatedly that Father never abused him. The report noted that coercing a child into making false allegations of abuse can be considered abuse in and of itself, and recommended to the trial court that if Mother were to continue to claim to Son that Father abused him, such behavior by Mother must “cease.”

Dr. Pestrak's report on his evaluation of Mother was also filed with the trial court in January 2012. Dr. Pestrak's report indicated that Mother felt anxious and fearful that she would "fail" in her attempts to protect Son and that she was angry at Father for selling the child into prostitution. While there were no indications that Mother suffered from hallucinations or delusions, the report stated that "[d]istorted thinking is indicated at times." When Dr. Pestrak asked Mother about the specific allegations of sexual abuse of Son, she told him that she believed that Father drugged Son and allowed Son to be sexually assaulted for money, that Father's church was a cult that worshiped Satan, that church members sexually assaulted both her son and her daughter, and that Father locked Son in his room for days at a time. The report stated that Mother told Dr. Pestrak, "My son would not have come forward (with the abuse allegations) if I did not encourage him." The report said that Mother acknowledged that it was surprising that there would be no physical evidence that Son had been sexually assaulted, given Son's description of the assault and the fact that it was allegedly committed on the child at such a young age.

Dr. Pestrak then asked Mother about the knot on Son's forehead that resulted in her taking Son to the hospital and the hospital's report to authorities of possible abuse; Mother continued to maintain that the knot of Son's forehead was the result of Father's abuse. Dr. Pestrak reminded her that the handyman at Father's home testified that he saw Son accidentally hit his head and that Father had no involvement in the incident, and asked Mother why the handyman would be motivated to lie to the trial court. The report stated that Mother replied, "Well, pedophiles travel in packs." She was convinced that Son was still having problems related to Father's abuse, and cited the fact that Son had been "talking back more" as an indication that Son was "not coping well."

Similar to the conclusion section in the other reports, the conclusion of Dr. Pestrak's report on Mother noted that his evaluation could not determine whether Mother had in fact coached Son into making allegations of abuse against Father. However, the report described Mother's comments in the interview as "quite distorted logically," adding, "She indicates that she felt she needed to prod her son to report this abuse. . . [but then] denies creating it and then coaching her son to lie about it." The report then outlined Dr. Pestrak's concerns. It noted that Mother is adamant that Father and members of his church engaged in recurring severe sexual and physical abuse of Son, even though she never observed any such abuse. Dr. Pestrak commented that Mother feels so "rigidly" that the abuse occurred that she "is unwilling and incapable of considering any alternative explanation." Dr. Pestrak opined: "This rigidity can be harmful to her relationship with her son (since even her son is now stating that his previous reports of abuse (some quite outlandish) never actually took place)." Dr. Pestrak observed that if the court were to determine that the alleged abuse did not take place, Mother "is most likely going to have difficulty considering this opinion in an objective manner." The report stated: "If her claims and/or opinions run counter to her son's regarding

the abuse and she foists them onto him, this can result in damage to their relationship as well as damage to [Son] psychologically.” The report recommended that Mother work with a licensed mental health professional.

In January 2012, Father filed a motion to terminate, or in the alternative suspend, Mother’s parenting time with Son. The motion cited Dr. Pestrak’s interviews and reports, and specifically Son’s statements to Dr. Pestrak that Mother coerced the child into making false allegations of sexual and physical abuse.

In March 2012, the trial court held an evidentiary hearing to review Dr. Pestrak’s reports and consider Father’s motion to terminate Mother’s parenting time. The record does not contain a transcript of this proceeding, but the trial court’s statement of the evidence summarizes what transpired.

At the hearing, Mother conceded that she “had to prod” Son into coming forward with the allegations of sexual abuse but denied that she ever encouraged either her son or her daughter into believing that Father had committed abuse. Mother testified that she remained convinced Son was in fact abused. Mother also said that, at the time of the hearing, she was receiving psychological counseling.

At the hearing, the trial court also heard further testimony from the therapist Mother engaged to counsel Son, Pamela Williams. Ms. Williams disagreed with the findings and conclusions in Dr. Pestrak’s report on Son. She was of the opinion that Son chose not to reiterate the allegations of sexual abuse to Dr. Pestrak because, even though Son told the truth about the abuse in his testimony at the first court hearing, his testimony was not believed, so Son quit saying that he had been abused. Ms. Williams asserted that Mother “could not get [Son] to lie,” and continued to say that she had “no reason not to believe” Son’s initial allegations of abuse.

Father relied on Dr. Pestrak’s reports and called no witnesses at this hearing.

The statement of the evidence outlined the trial court’s holding at the conclusion of the hearing. The trial court found that Mother was “unable to conform her conduct to the Court’s orders and findings as to the alleged sexual abuse.” It also found that “Mother’s continuing actions concerning sexual abuse of [Son] constituted emotional abuse of [the] child.” The trial court expressed reluctance to terminate Mother’s parenting time with Son, but said that it had “found no way to control Mother’s behavior concerning the relationship between Father and [Son].” It concluded that it was necessary for the trial court to suspend all parenting time for Mother, even supervised visitation, “until . . . Mother submits a plan of therapy which will provide her with the skills necessary to allow her to conform to the Court’s orders.” Thus, the

trial court returned custody of Son to Father and terminated Mother's parenting time with the child "until a proper petition is filed."

The trial court's ruling was set forth in a written order entered in April 2012. In the order, the trial court first made a factual finding about the abuse: "[T]he alleged abuse did not actually take place, . . . the allegations of sexual abuse and physical abuse are not true." The trial court cited the statements in Dr. Pestrak's report that Son "now denies the alleged abuse, and states that he was coerced into making the allegations by his Mother." The trial court specifically cited Dr. Pestrak's opinion that "Mother's continued insistence on and belief in the allegations of abuse can result in her attempting to coerce the child again, which would be considered a form of emotional abuse which can be traumatizing to the child." The order then set forth the trial court's holding and its reasoning:

The Court finds that the Motion to Suspend Visitation should be granted as the Court finds her to be unable to conform her conduct to the Court Orders regarding the alleged abuse. The Court further finds that telephone contact between the Mother and child at this time would not be in the child's best interest. The Court found no way to control the Mother's behavior. While the Court does not desire to terminate the Mother's visitation permanently, the Court finds that visitation should be suspended until such time[] the Mother submits a plan of therapy which will provide her with the skills necessary to allow her [to] conform with the Court's Orders. The child may participate in the therapy if recommended by the therapist. If such recommendation is made, the Father will cooperate to ensure the child's attendance at the therapy sessions. The Mother may bring the issue back before the Court by filing a new Petition, but some progress toward[] the goal set forth above must be shown before the Court will hold a hearing on this matter again. If the Mother continues to make derogatory statements to the child about the Father, the Court will terminate visitation.

Thus, the trial court found that Mother was simply unable to conform her conduct to the trial court's orders and to the trial court's finding that no abuse occurred. It suspended all parenting time for Mother, supervised or not, until she submits to the trial court a therapy plan to give her the skills to conform her conduct. The trial court invited her to file a new petition, provided she could show some progress. In the meantime, the trial court ordered the permanent care and custody of Son returned to Father and enjoined Mother from having any contact with Son.⁹ From this order, Mother now appeals.

⁹The trial court held that neither party owed the other any child support and declined to hold Mother in
(continued...)

ISSUES ON APPEAL AND STANDARD OF REVIEW

On appeal, Mother contends that the trial court erred in returning this child to the custody of Father. Mother also argues that the trial court erred in totally suspending Mother's contact with the child and in refusing to consider any form of supervised visitation or the best interest of the child.

We review the trial court's factual findings *de novo* on the record, with a presumption of correctness, unless the evidence preponderates to the contrary. *See* Tenn. R. App. P. 13(d). The trial court's conclusions of law are reviewed *de novo*, with no presumption of correctness. *See Bowden v. Ward*, 27 S.W.3d 913, 916 (Tenn. 2000); *Earls v. Mendoza*, No. W2010-01878-COA-R3-CV, 2011 WL 3481007, at *5 (Tenn. Ct. App. Aug. 10, 2011).

The trial court below was presented with considerable evidence, much of which consisted of conflicting testimony. The trial court had the opportunity to see the witnesses and view their demeanor as they testified. For this reason, "[t]he weight, faith, and credit to be given to a witness's testimony lies in the first instance with the trial court as the trier of fact, and the credibility accorded will be given great weight on appeal." *McDonnell Dyer, P.L.C. v. Select-O-Hits, Inc.*, No. W2000-00044-COA-R3-CV, 2001 WL 400386, at *8 (Tenn. Ct. App. Apr. 20, 2001). *See also Davis v. Davis*, 223 S.W.3d 233, 238 (Tenn. Ct. App. 2006). "[A]ppellate courts will not re-evaluate a trial judge's assessment of witness credibility absent clear and convincing evidence to the contrary." *Wells v. Tenn. Bd. of Regents*, 9 S.W.3d 779, 783 (Tenn.1999) (citing *Humphrey v. David Witherspoon, Inc.*, 734 S.W.2d 315, 315-16 (Tenn.1987); *Bingham v. Dyersburg Fabrics Co., Inc.*, 567 S.W.2d 169, 170 (Tenn. 1978)). The weight and credibility accorded to expert testimony is also entrusted to the trier of fact. *See McDaniel v. CSX Transp., Inc.*, 955 S.W.2d 257, 265 (Tenn. 1997). We refrain from second-guessing factual findings that were based on the trial court's credibility determinations unless clear and convincing evidence demonstrates error. *Wells*, 9 S.W.3d at 783.

ANALYSIS

This Court has previously recognized the knife's edge that is presented to a trial court when one parent alleges that the other parent sexually abused their child:

Accusations of child sexual abuse by one parent against the other parent presents one of the most difficult issues faced by a trial court. Suspicion of such abuse must be taken seriously and . . . investigated thoroughly, for the

⁹(...continued)

contempt for failure to pay child support. This holding was not appealed.

consequences to the child of allowing any abuse to continue are grave. However, mistakenly concluding that a parent has abused his child, when in fact there has been no abuse, has serious consequences as well, including the almost-certain destruction of the parent-child relationship and disgrace to the accused parent. In addition, determining whether abuse has occurred can be enormously difficult; there is frequently a paucity of physical evidence, and the alleged child victim may be unable to accurately relate pertinent events. Finally, even investigating the accusation is delicate; the suggestibility of the alleged victim is almost invariably an issue, and heavy-handed or repetitive interrogation or physical examination can itself inflict long-lasting trauma on a child.

Keisling v. Keisling, 196 S.W.3d 703, 722 (Tenn. Ct. App. 2005).

Decision to Return Son to Father's Custody

On appeal, Mother argues that the evidence in the record preponderates against the trial court's decision to return custody of Son to Father. Mother points to the disclosures of abuse that Son made to her, Son's testimony in open court, the child's drawing of a male penis done in a counseling session with the therapist Ms. Williams, and Daughter's testimony that she saw Father sexually abuse Son in 2004.

Mother argues that the report by Dr. Pestrak, on which the trial court relied, is not credible. She contends that Dr. Pestrak failed to take into account the fact that Son told numerous persons other than Mother that Father abused him, including DCS investigators, therapist Pamela Williams, and the trial court. Mother characterizes Dr. Pestrak's report as speculative in nature; she points to the fact that it does not suggest that Mother "would purposefully harm the child" and notes that the report acknowledges that Dr. Pestrak did not, and could not, know whether the abuse actually occurred. Mother observes that Dr. Pestrak suggests in his report doing additional voice stress tests and having the parties undergo lie detector tests, and she cites this as an indication that the evaluation itself is inconclusive and should be considered invalid. Finally, Mother points to the fact that the trial court returned Son to Father's custody *before* Dr. Pestrak interviewed the child; Mother contends that this decision signaled to Son that the trial court did not believe his testimony reciting substantial abuse, and thus caused Son to change his story about the abuse in his interview with Dr. Pestrak.

After describing at length the evidence adduced during the trial court's hearings, Mother argues vigorously that it preponderates in favor of a finding that Father committed serious and repeated abuse of Son. She states: "It would be an understatement to say that it is clear that something sexually inappropriate has happened to this child, . . . while the child was in

Father's custody." Mother insists that the trial court erred in placing Son in Father's custody in the face of such strong evidence of abuse and asks this Court to vacate the trial court's decision.

At the heart of Mother's argument on appeal is her contention that the trial court erred in finding as a matter of fact that Father did not abuse their Son. All of the decisions with which Mother takes issue, including the trial court's decision to return custody of Son to Father as the primary residential parent, flow from this finding. Therefore, we will first focus on the pivotal factual finding that no abuse occurred.

We have reviewed at length the substantial record in this case. It is clear that the trial court below approached with great care the question of whether the abuse had in fact occurred. Despite the trial court's earlier designation of Father as the primary residential parent, when the abuse accusations arose, the trial court temporarily placed Son in Mother's custody and temporarily required supervision of Father's parenting time. It then set evidentiary hearings to ascertain the truth of the accusations.

After hearing numerous witnesses in the first hearing, including Son, Daughter, Mother, Father, and Ms. Williams, the trial court was clearly skeptical about whether the abuse occurred. The trial court's doubts about the abuse appear rooted in part in the evolution of the abuse accusations, starting with the children's 2004 denial of any abuse in their discussions with DCS investigators and culminating in the 2010 allegations of beatings, drugs, prostitution, and nightly anal sex by Father and multiple strangers in hotels that continued over a period of years. Such allegations seem more dubious given the lack of any corroborating evidence, such as physical evidence from the medical examinations Mother arranged for Son. Despite the trial court's suspicion at the conclusion of the hearing that the abuse allegations were untrue, it temporarily left Son in Mother's custody, left in place the restrictions on Father's parenting time, and told the parties to arrange for an evaluation of Son and of both parents by a neutral expert.

Although Mother now complains that the trial court returned Son to Father's custody before Son was interviewed by Dr. Pestrak, Mother's conduct left the trial court with little choice. The trial court gave Mother every chance to bring the child to Dr. Pestrak herself, to no avail. After Mother made it apparent by her conduct that she simply would not do so, the trial court considered Dr. Pestrak's evaluation of Father, which indicated no proclivities toward sexual abuse of a child, and only then did the trial court return custody of Son to Father, with directions to secure the required evaluation. The record shows that the trial court acted carefully and responsibly in its decision to return the child to Father's care so that he could bring the child to Dr. Pestrak for the court-ordered evaluation.

Finally, the trial court made no factual finding on the abuse until after it considered the testimony of approximately 18 witnesses and over 20 exhibits, including thorough expert evaluations of both parents and of Son. After doing so, the trial court made the pivotal factual finding that the allegations of abuse against Father were not true. This factual finding was based squarely on the trial court's evaluation of the credibility of all of the witnesses, including Mother, Father, Son, Daughter, Ms. Williams, and Dr. Pestrak. As noted above, the appellate court is obliged to give great deference to such determinations by the trial court, and we "will not re-evaluate a trial judge's assessment of witness credibility absent clear and convincing evidence to the contrary." *Wells*, 9 S.W.3d at 783.

After a careful and probing review of the entire record in this case, we must conclude that Mother has not presented this Court with clear and convincing evidence that the trial court's assessment of the credibility of these witnesses is wrong. According appropriate deference to the trial court's credibility determinations, the appellate record contains ample evidence to support the trial court's finding. Consequently, we affirm the trial court's factual finding that the allegations of abuse against Father are false.

Mother argues that the trial court erred in returning custody of Son to Father in that the trial court failed to "make any findings of fact to support its decision to change custody to [Father]" and that it made no factual findings regarding a material change in circumstances or regarding Son's best interest. This argument is based on a faulty premise. In the procedural posture of this case, returning Son to Father's custody was not a change in the designation of primary residential parent. In the permanent parenting plan in effect when the allegations of abuse arose, Father is designated as the primary residential parent. Son was placed in Mother's custody *temporarily*, pending the trial court's consideration of the abuse allegations and the concomitant motions by the parties; there was no change in the permanent designation of primary residential parent. Hence, no finding of a material change in circumstances was necessary for the trial court to decide to return Son to Father's custody; the trial court's factual finding that no abuse occurred was ample factual support for its decision.

Considering the record as a whole, we find no error in the trial court's factual finding that no abuse occurred or in its decision to return Son to Father's custody.

The Suspension of Mother's Parenting Time

On appeal, Mother argues strenuously that the trial court erred in suspending *all* parenting time with Son. She contends that there was no evidence in the March 2012 hearing that Mother could not conform her behavior to the trial court's order, only testimony that Mother continued to believe that Son's prior allegations of abuse are true. She notes that Dr. Pestrak's report on his evaluation of Mother does not say that Mother cannot conform her

behavior to the trial court's directive; it contains only conditional statements about what could happen. Mother observes that, while the child was in Father's custody and Mother had alternate parenting time, there were no problems with her returning the child to Father at the end of her parenting time. Finally, Mother emphasizes that the trial court did not try any type of restrictions on her parenting time, such as supervision of her parenting time or even allowing only telephone contact; it simply cut off all contact between Mother and Son. This, she argues, was an abuse of the trial court's discretion.

We agree with Mother that a decision to suspend all contact between a parent and child is not a decision to be made lightly. When a trial court is faced with such a question, much is at stake:

The stakes of an erroneous or unfounded decision are high. On one hand, if any type of contact with [the parent] would in fact be emotionally injurious to [the child], then a court order requiring such contact may have profound consequences to [the child's] well-being. On the other hand, eliminating any contact between [parent and child] whatsoever "has the practical effect of terminating the parent-child relationship," and carries with it profound consequences to both [the parent] and [the child].

Rudd v. Rudd, No. W2011-01007-COA-R3-CV, 2011 WL 6777030, at *6 (Tenn. Ct. App. Dec. 22, 2011) (quoting **In the Matter of Z.A.W.**, No. W2005-01956-COA-R3-JV, 2006 WL 1627180, at *5 (Tenn. Ct. App. June 12, 2006)). Thus, the consequences of eliminating all contact between parent and child can be dire. Under certain circumstances, however, a parent's time with his or her child may be temporarily suspended or even terminated by a trial court. "Because of the legal and psychological significance of a parent's visitation rights, persons seeking to restrict or eliminate visitation must demonstrate that there is probable cause that the child will be placed at risk if visitation is permitted." **Bueno v. Todd**, No. W2005-02164-COA-R3-CV, 2006 WL 2106006, at *6 (Tenn. Ct. App. July 31, 2006). "Termination of visitation, which has the practical effect of terminating the parent-child relationship, must be supported by specific findings that visitation by the non-custodial parent will result in physical, emotional, or moral harm to the child." **In the Matter of Z.A.W.**, 2006 WL 1627180, at *5 (citing **Eldridge v. Eldridge**, 42 S.W.3d 82, 85 (Tenn. 2001)). The proof must be "definite," and must demonstrate that visitation is "likely" to endanger the child's physical or emotional health. **Bueno**, 2006 WL 2106006, at *6 (quoting **Suttles v. Suttles**, 748 S.W.2d 427, 429 (Tenn. 1998) and citing Tenn. Code Ann. § 36-6-301). "These evidentiary standards have effectively created a presumption against severely circumscribing or denying visitation to non-custodial parents." **Id.** "Such drastic measures are only appropriate when arrangements less detrimental to the parent-child relationship are not available or workable as a practical matter." **Id.**

This Court has summarized the process for a trial court to consider limiting, suspending or terminating all parenting time by the alternative residential parent:

Accordingly, there is a specific process the trial court must follow when limiting, suspending or terminating visitation. First, the trial court must make a specific finding, based on definite evidence, that visitation would cause harm to the child. After making this finding, the trial court must then determine the least restrictive visitation plan as available and practical. In determining the least restrictive visitation plan, the trial court must make specific findings, based on definite evidence, that any less restrictive visitation would be harmful to the child. The burden of proof on both the issue of harm and the least restrictive visitation plan, is on the party seeking to restrict visitation.

Rudd, 2011 WL 6777030, at *5 (citations omitted). In considering the issue, the trial court must bear in mind that “it is the public policy of the state of Tennessee that courts shall grant parenting time with the non-custodial parent unless visitation will harm the child.” *Id.* (emphasis in original omitted) (quoting *Kershaw v. Kershaw*, No. M2009-00151-COA-R3-CV, 2009 WL 4039262, at *3 (Tenn. Ct. App. Nov. 20, 2009)).

In the case at bar, the trial court not only found the alleged abuse did not occur, it also found that Mother “coerce[d]” Son into making the allegations. As stated above, we have affirmed the trial court’s finding that the abuse allegations were false. From our careful review of the record, and with appropriate deference to the trial court’s assessment of the witnesses’ credibility, the factual finding that Mother coerced Son into making the abuse allegations is also supported by the preponderance of the evidence in the record. Such a determination does not require the trial court to find that Mother was aware that the abuse allegations were false or that she sought to inflict harm on her son. To the contrary, the proof in the record indicates that Mother convinced herself that Father abused Son, and then relentlessly “prodded” Son into “disclosing” the abuse that she believed had really happened.¹⁰

Moreover, the abuse allegations that Mother coerced Son into making against Father are horrific. Beatings, drugs, nightly anal penetration by Father, trips to hotels for multiple members of Father’s church to inflict still more abuse. Coercing a child into making such monstrous allegations against his own father can have crippling psychological effects and be ruinous to the child’s relationship with his father.

¹⁰We note that the record includes Mother’s testimony about her dreams that members of Father’s church abused her, which Mother became convinced were true in part, and that Daughter apparently later had similar “dreams.” Mother and Daughter both alluded to the sexual abuse of Daughter by her biological father.

The trial court also found that Mother was “unable to conform her conduct to the Court’s [o]rders.” This finding is also well-supported in the record, beginning of course with the 2003 episode in which Mother absconded with Son and secreted the child from Father. The evidence shows that Mother followed Son for his parenting time with Father, even though Father’s parenting time was supervised, and that she simply would not comply with the trial court’s order to take the child to Dr. Pestrak for evaluation.

If the primary danger, however, were that Mother might try to abscond with Son, other alternatives would likely suffice, such as telephone visitation or supervision of her parenting time. As the trial court recognized, the real danger is caused by the prospect that Mother, perhaps with the intent only to protect her child, would continue to inflict emotional abuse by virtue of her unceasing hypervigilance about abuse. The record indicates that, despite any proof to the contrary, Mother could not accept the possibility that the abuse allegations were just not true. This is demonstrated perhaps most vividly by Mother’s reaction to the knot on Son’s forehead and the testimony by Father’s handyman that the child was running in Father’s home to show the handyman a prized karate item and accidentally hit his head. As Dr. Pestrak related in his report on Mother, instead of realizing that perhaps this episode was not abuse, Mother accused the handyman of being yet another pedophile. In *Keisling*, in which the mother of the child at issue held fast to the belief that her daughter was abused by the father even after the allegations were deemed untrue, the Court emphasized the damage to the child’s emotional well-being caused by the mother’s “persistent focus on the child’s sexuality and genitalia” and her “hypervigilance regarding perceived sexual abuse.” *Keisling*, 196 S.W.3d at 724. Under the circumstances in this case, the trial court below had ample basis to conclude that, until Mother received considerable help from a mental health professional, she could not help but continue to inflict emotional abuse on Son, by constantly focusing on sexual abuse and communicating to Son that he is unsafe in the presence of his father. Thus, the trial court suspended Mother’s contact with Son only until Mother “submits a plan of therapy which will provide her with the skills necessary to allow her [to] conform with the Court’s Orders,” and it also permitted Son to participate in therapy with Mother if recommended by the therapist.

After a thorough review of the record, we must conclude that the trial court’s order, though drastic, is supported by the evidence in the record and represents the least restrictive alternative available under the circumstances. Therefore, we find no error in the trial court’s decision.

“This Court has seen prior cases in which one parent remains convinced that the other parent has sexually abused their child, despite thorough investigations that concluded otherwise, with disastrous results.” *Byars v. Young*, 327 S.W.3d 42, 49 (Tenn. Ct. App. 2010) (citing *Keisling*, 196 S.W.3d at 722; *B.M.M. v. P.R.M.*, No. M2002-02242-COA-R3-CV, 2004 WL

1853418, at *19 (Tenn. Ct. App. Aug. 18, 2004). The trial court below laid out a clear pathway for Mother to resume her relationship with Son, if only she will take it.

All other issues raised on appeal are pretermitted by this decision.

CONCLUSION

The decision of the trial court is affirmed. Costs on appeal are assessed against Appellant F. A. B.

HOLLY M. KIRBY, JUDGE