

UNREPORTED  
IN THE COURT OF SPECIAL APPEALS  
OF MARYLAND

No. 2707

September Term, 2015

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ROBERTO L. MOLINA

v.

KELLY J. MOLINA

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Kehoe,  
Berger,  
Harrell, Glenn T., Jr.  
(Senior Judge, Specially Assigned),

JJ.

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Opinion by Berger, J.

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Filed: January 4, 2017

\*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

This case is before us on appeal from an order of the Circuit Court of Anne Arundel County entering a judgment of absolute divorce. Roberto L. Molina (“Father”) appeals the circuit court’s ruling with respect to child custody and alimony.

Father presents two questions for our consideration on appeal, which we have rephrased as follows:

1. Whether the circuit court abused its discretion by awarding Mother primary physical and sole legal custody except for decisions regarding reunification and related therapy.
2. Whether the circuit court abused its discretion by awarding Mother indefinite alimony in the amount of \$1,000.00 per month.

For the reasons explained herein, we shall affirm the judgment of the circuit court.

### **BACKGROUND**

Father and Kelly J. Molina (“Mother”) were married on June 2, 1995. Three children were born as a result of their marriage: A., born September 1, 1998; J., born July 8, 2001; and B, born December 31, 2005 (collectively, “the Children”). The parties met while both were students at the United States Naval Academy, from which both parties graduated. Both served in the Navy in separate squadrons during the early years of the marriage. Mother subsequently earned a master’s degree in human resource management, but did not gain any relevant practical experience in the field. In 2000, Mother left the Navy and became a stay-at-home mother. The decision for Mother to cease paid employment in order to be more available for the parties’ children was a joint decision by the parties. Throughout the marriage, Father was the primary earner and Mother was

primarily responsible for the children on a day-to-day basis. At times, Father was absent due to deployments. Mother did not return to paid employment until 2013, when she began working part-time doing administrative work at an orthodontist's office. At the time of trial, Mother worked approximately 25 hours per week earning approximately \$20,000.00 per year. Father retired from the Navy during the course of this litigation. By the end of the trial, he began working at Lynch Consultants, earning approximately \$110,000.00 per year.

The parties offer sharply different accounts of the circumstances giving rise to their separation and throughout the litigation of this case, but both parties agree that Husband had three affairs. The parties agree that there were multiple periods of separation for varying lengths of time between 2008 and when the parties ultimately separated for the final time in 2013. The crux of Father's argument with respect to custody is that Mother improperly interfered with Father's relationship with the Children, which we shall set forth in more detail below.

Ultimately, Father filed the complaint giving rise to the present appeal on May 20, 2013. Shortly after being served with the complaint, Mother filed for a protective order, alleging that Father had assaulted her and that Father had a history of abusing the Children. A hearing on the motion for protective order was held on June 25, 2013 after multiple postponements. The court denied Mother's request for a protective order.

The matter came before the circuit court for trial over fifteen days between September 3, 2014 and June 1, 2015. Over the course of the trial, the circuit court heard testimony from a wide range of lay and expert witnesses, including the parties and the

Children. The court also heard testimony from Jean Conjelko (Mother's mother), custody evaluator Helen Laird, reunification counselor Nina Routhier, psychiatrist Dr. Anthony Wolff, clinical psychologist Dr. Scott Smith, licensed clinical social worker Patricia Cummings, and vocational expert Lianne Friedman.

Father argued that Mother endeavored to alienate him from the Children and testified that Mother attempted to accomplish this in various ways. Father testified as to incidents when Mother's body language made it clear to the Children that she did not support Father. Father further testified that Mother failed to tell the Children to be polite to Father, that Mother did not encourage the Children to engage with Father, that Mother failed to communicate to Father what the Children wanted for Christmas gifts, and that Mother failed to assist Father when responding to the Children's poor behavior during visits with Father.<sup>1</sup>

Mother characterized the cause of the breakdown of the relationships between Father and the Children quite differently. Mother presented evidence that Father had beaten the Children with a belt and had engaged in other discipline methods which Mother alleged deteriorated Father's relationship with the Children.<sup>2</sup> The circuit court also spoke with

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<sup>1</sup> Father maintains that the Children "intentionally clogged toilets at [Father's] home, peed in [Father's] vehicle, refused to get out of [Father's] vehicle at his home, flicked water in [Father's] face, hid [Father's] remote control, tore the interior of [Father's] vehicle, [and] refused to sit with [Father] when he would take them to restaurants."

<sup>2</sup> Mother characterized Father's behavior as physically and emotionally abusive. A Department of Social Services investigation ruled out abuse. According to Mother and other witnesses, Husband punished the Children for soiling their underwear by making them wear diapers, which made the Children cry. Mother testified that Husband pushed,

each of the Children. B., who was eight years old at the time, told the court that he did not feel safe around Father. B. said that Father “pulls my hair and ears and smacks us and spanks us.” J., who was thirteen years old at the time, also told the court that Father would beat the Children with a belt when he had a bad day, but J. said that Father had not done so recently. A., then sixteen years old, told the court that Father “takes it out on us and screams and curses” when he is upset. According to A., Father would pull down A.’s pants and beat him with a belt until he was twelve or thirteen years old.

Ms. Conjelko’s testimony was consistent with the accounts from Mother and the Children. Ms. Conjelko testified that, in her view, Father “never . . . enjoy[ed] his children.” Ms. Conjelko further testified about Father’s physical discipline methods.

Dr. Wolff, whose testimony and report were detailed in the circuit court’s memorandum opinion, testified that Father had no “major mental illness” but did have some “impulse control difficulties.” Dr. Wolff emphasized that he did not believe that Father took any responsibility for his role in his estranged relationship with the Children. Dr. Wolff testified that although Mother’s attitude toward Father “probably has bled through to” the Children, he did “not view [Mother] as having deliberately sabotage[ed] or undermine[d] [Father’s] relationship with the [Children].”

The circuit court additionally heard testimony from Dr. Scott Smith, a clinical psychologist who worked with the family on issues relating to reunification between Father

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shoved, and threatened to hit the Children, and that when J. was wetting the bed, Husband attached a battery to the bed and told J. that if he wet the bed again he would be electrocuted.

and the Children. Dr. Smith testified that Father was “reluctant” to participate in counseling. Dr. Smith explained that Father attempted to control the counseling process. Dr. Smith ultimately resigned from working with the family because “there was an onerous<sup>[3]</sup> tone to [Father’s] email and his attorney’s communication . . . suggesting that [Dr. Smith] had an obligation to share with [Father] the confidential and privileged information [Dr. Smith] had -- from [his] meetings with the [C]hildren and with [Mother].”

Social worker Ms. Cummings, another reunification therapist, testified that A. was afraid of and angry with Father and that J. appeared very angry. When asked about alienation, Ms. Cummings explained that there is no universally accepted definition of parental alienation used by psychologists and clinical practitioners. Ms. Cummings further explained that there are no criteria for establishing whether parental alienation has occurred. Ms. Cummings testified that she believed that the Children were more aligned with Mother than with Father.

Helen Laird, a licensed clinical social worker, performed a court-ordered custody evaluation and testified before the circuit court. Ms. Laird found that there was very limited visitation between Father and the Children following the parties’ separation in May 2013. Ms. Laird explained that the Children often refused to get in the car with Father, refused to stay with Father, and ran away from Father on two occasions requiring police searches.

Ms. Laird discussed the issue of alienation at length in her report. She explained that an alienated child is “one who expresses, freely and persistently, unreasonable negative

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<sup>3</sup> Dr. Smith described Father’s tone as “onerous,” which is nonsensical in this context. We believe Dr. Smith likely intended to describe Father’s tone as “ominous.”

feelings and beliefs (such as anger, hatred, rejection, and/or fear) toward a parent that are significantly disproportionate to the child's actual experience with that parent." Ms. Laird explained:

A child's rejection of a parent is usually the result of many factors. In general terms, some of these factors could be: an aligned parent who uses their child for their own emotional support and acts in ways to sabotage their child's relationship with the other parent; an aligned parent who exaggerates, distorts, and redefines incidents as violence and abuse thus painting the rejecting parent as dangerous; a lack of a warm parent/child relationship prior to separation on the part of the rejected parent, a rigid parenting style on the part of the rejected parent, a prolonged separation between the child and the rejected parent, a high level of conflict between the parents and protracted custody litigation.

Ms. Laird concluded that "there is evidence" that Mother was "whether or not intentionally, sabotaging the relationships" between Father and the Children. Ms. Laird found that Father also "bears some responsibility in the current relationship with his children." In her report, Ms. Laird characterized this case as one of "severe alienation" and opined that the family should continue in reunification counseling and that Father should have a "gradually expanding schedule of access" to the Children. At trial, Ms. Laird testified that there was "not such a thing as parental alienation syndrome" but that "there is certainly alienation." Ms. Laird explained that alienation is "remarkably rare," occurring "in about six percent of the cases." Ms. Laird concluded that the Children were "complete[ly] alienated from" Father. Ms. Laird testified that her recommendation was that the parties should have joint legal and shared physical custody on a graduated schedule,

reaching a minimum of alternate weekends with Father, a weekday overnight with Father, and three non-consecutive weeks during the summer.

On August 31, 2015, the circuit court issued a comprehensive memorandum opinion and order and judgment of absolute divorce. The circuit court granted Mother primary physical custody and granted visitation to Father. The circuit court ordered that Father attend eight weekly sessions with a qualified reunification therapist prior to commencing visitation. The court further ordered Father to continue weekly reunification therapy for twenty-six sessions “with such combinations of the Children as recommended by the reunification therapist.” The court imposed a graduated visitation schedule linked to Father’s participation in therapy.<sup>4</sup> The circuit court ordered Mother to “exert her best efforts to facilitate the Children’s visitation with Father by asking the Children to attend visitation and to cooperate with their Father, advising the Children that it is important that they attend visitation and encouraging them to greet their Father and act in a respectful manner towards Father.” The circuit court further set forth a visitation schedule for various holidays.

With respect to alimony, the circuit court first ordered that Father pay Mother \$1,600.00 per month in indefinite alimony in its August 31, 2015 order. Both parties filed motions to amend on September 10, 2015. The circuit court held a hearing on the motions to amend on December 18, 2015, and subsequently modified the alimony award to \$2,000.00 per month in its January 29, 2016 order. Husband filed a second motion to alter

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<sup>4</sup> The circuit court ordered that A. “shall only visit with Father if [A.] so desires.”



or amend, and the circuit court issued a second amended opinion and order on March 23, 2016. The court reduced the alimony award to \$1,000.00 per month. Father noted a timely appeal, and Mother noted a timely cross-appeal. Mother's cross-appeal was subsequently withdrawn.

We shall present various other facts and proceedings as necessitated by our discussion of the issues on appeal.

## DISCUSSION

### I.

Father's first contention is that the circuit court abused its discretion by awarding primary physical and sole legal custody<sup>5</sup> to Mother, except for the award of decision-making authority to Father regarding the children's reunification counseling and related therapy with Father. We are unpersuaded.

We review child custody determinations utilizing three interrelated standards of review. *In re Yve S.*, 373 Md. 551, 586 (2003). The Court of Appeals described the three interrelated standards as follows:

We point out three distinct aspects of review in child custody disputes. When the appellate court scrutinizes factual findings, the clearly erroneous standard of [Rule 8-131 (c)] applies. [Second,] if it appears that the [court] erred as to matters of

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<sup>5</sup> "Physical custody . . . means the right and obligation to provide a home for the child and to make the day-to-day decisions required during the time the child is actually with the parent having such custody." *Taylor v. Taylor*, 306 Md. 290, 296 (1986). "Legal custody carries with it the right and obligation to make long range decisions involving education, religious training, discipline, medical care, and other matters of major significance concerning the child's life and welfare." *Id.* "Joint legal custody means that both parents have an equal voice in making those decisions and neither parent's rights are superior to the other. *Id.* at 296-97.

law, further proceedings in the trial court will ordinarily be required unless the error is determined to be harmless. Finally, when the appellate court views the ultimate conclusion of the [court] founded upon sound legal principles and based upon factual findings that are not clearly erroneous, the [court's] decision should be disturbed only if there has been a clear abuse of discretion.

*Id.* at 586. In our review, we give “due regard . . . to the opportunity of the lower court to judge the credibility of the witnesses.” *Id.* at 584. We recognize that “it is within the sound discretion of the [trial court] to award custody according to the exigencies of each case, and . . . a reviewing court may interfere with such a determination only on a clear showing of abuse of that discretion. Such broad discretion is vested in the [trial court] because only [the trial judge] sees the witnesses and the parties, hears the testimony, and has the opportunity to speak with the child; he is in a far better position than is an appellate court, which has only a cold record before it, to weigh the evidence and determine what disposition will best promote the welfare of the minor.” *Id.* at 585-86.

The appellate courts have set forth a non-exhaustive list of factors be considered by a court when determining an appropriate custody arrangement: (1) fitness of the parents, (2) the character and reputation of the parties, (3) the desire of the natural parents and any agreements between them, (4) the potential for maintaining natural family relations, (5) the preference of the child, when the child is of sufficient age and capacity to form a rational judgment, (6) material opportunities affecting the future life of the child, (7) the age, health, and sex of the child, (8) the residence of the parents and opportunity for visitation, (9) the length of separation from natural parents, (10) whether there was prior voluntary abandonment or surrender of custody of the child, (11) potential disruption of the child's

social and school life, (12) geographic proximity of parental homes, (13) demands of parental employment, (14) financial status of the parents, (15) impact on state or federal assistance, (16) benefit to parents, (17) capacity of parents to communicate and to reach shared decisions affecting the child's welfare, (18) willingness of parents to share custody, (19) the relationship established between the children and each parent, and (20) the sincerity of the parent's request. *Taylor, supra*, 306 Md. at 304-11; *Montgomery Cnty. Dep't of Social Serv. v. Sanders*, 38 Md. App. 406, 420 (1977). Not all of the factors are necessarily weighed equally; rather, it is a subjective determination. *See Taylor, supra*, 306 Md. at 303 ("Formula or computer solutions in child custody matters are impossible because of the unique character of each case, and the subjective nature of the evaluations and decisions that must be made."). The capacity of the parents to communicate and reach shared decisions is "the most important factor in the determination of whether an award of joint legal custody is appropriate." *Id.* at 304.

In this case, the circuit court considered each of the factors and set forth its reasoning and conclusions in detail. Indeed, Father does not dispute that the circuit court considered the relevant factors. Rather, Father maintains that the circuit court should have made different factual findings. As we shall explain, the circuit court's findings were supported by the evidence presented at trial, and, as such, we shall not disturb them on appeal.

The circuit court explained that its determination with respect to parental fitness was based in part upon psychiatric examinations both parties had undergone with Dr. Anthony Wolff. The court explained that Father's examination "revealed obsessive-compulsive, narcissistic, and histrionic personality characteristics." The circuit court credited Dr.

Wolff's conclusion "that Father's obsessive-compulsive personality, narcissistic and histrionic personality traits, combined with likely lapses in judgment, and a likely skewed perspective, his high need for affection, and his need for control in the contest of his relationships with Mother and the Children have contributed to the current estrangement."

The court found that there was "no evidence presented that Mother has taken any outward[] steps to alienate the [C]hildren from Father." The court credited Dr. Wolff's conclusion "that it is likely that Mother's negativity toward Father has been apparent to the Children, even if not deliberately on her part." The court commented that Dr. Wolff "stated that Mother's pattern of such behavior does not disconfirm the hurtfulness and insensitivity on Father's part towards Mother and the Children." The court noted that Mother's discomfort, feeling of betrayal by Father, and stress level were "highly palpable," and that it was "very likely that these emotional reactions, and some of the associated adult-level information" were obvious to the Children.

The court explained that, in addition to testimony from Dr. Wolff and the results of the psychiatric evaluations, it considered testimony from the parties themselves and from other professionals. The court found that "Father's behavior . . . contributed to the tense, estranged state of his relationship with the Children, including his disciplinary methods, attitude towards the Children, and lack of involvement in the Children's daily lives." The court further found that "Mother's conduct, even if unintentional, created the impression that Father was to be shunned and this led the Children to believe that in order to be loyal to Mother, they must disrespect and reject Father."

The circuit court ultimately found “that both Mother and Father are fit parents, though both have played a role in the severe estrangement between Father and the Children.” The circuit court found that Mother was “more fit as a parent based on her continual involvement in the Children’s lives and her positive relationship with the Children.”

Father asserts that this finding is not supported by the evidence and maintains that his lack of continual involvement was “due to [Mother’s] efforts to preclude him from the [C]hildren’s lives, and [Mother’s] refusal to comply with visitation.” Father further asserts that his lack of a positive relationship with the children was due to Mother’s manipulation of the children.

We reject Father’s attempts to relitigate the factual issues presented below. As we explained *supra*, it is the circuit court judge, and not the appellate court, who “sees the witnesses and the parties, hears the testimony, and has the opportunity to speak with the child.” *In re Yve S.*, *supra*, 373 Md. at 585. As discussed *supra*, the court considered testimony from several lay and expert witnesses during the fifteen days of trial. Certain expert witnesses placed more blame on Mother for the deterioration in the relationship between Father and the Children. Other witnesses explained that Father minimized his own role in the deterioration. We cannot say that the circuit court’s conclusions with respect to parental fitness were unsupported by the record. Evidence was presented which would support either parent’s narrative. Indeed, it is precisely the province of the trial court to make factual determinations when conflicting evidence is presented. *See Brown v. Brown*, 195 Md. App. 72, 120 (2010) (“The trier of fact may believe or disbelieve, accredit

or disregard, any evidence introduced.”) (internal quotation omitted). Because there was evidence to support the circuit court’s finding that both parents were fit but that Mother was “more fit,” we will not disturb this finding on appeal.

Father further asserts that the circuit court erred by finding that Mother “has stronger character” than Father. The circuit court found that both parents “are upstanding members of the community and both served honorably in the United States Navy.” Father asserts that the circuit court disregarded allegations he raised with respect to Mother’s truthfulness. The circuit court acknowledged that Father had “questioned Mother’s character for truthfulness several times throughout the course of the merits proceeding.” The court further commented that both parties presented testimony about Father’s extra-marital affairs. Again, we emphasize that the circuit court was entitled to draw conclusions based upon the evidence presented. As such, we will not disrupt the circuit court’s conclusion with respect to the character and reputation of the parties.

Father raises no arguments with respect to the desire of the natural parents to have custody and any agreements between them regarding custody. With respect to the potential for maintaining natural family relations, the circuit court found that Mother and the Children have a close relationship with the Mother’s family and that the Children have little interaction with Father’s family. The court found that it was in the Children’s best interest to maintain their relationship with Mother’s extended family and that “Mother best fosters that relationship.” Father does not challenge the court’s finding with respect to this factor.

The court considered the preference of each of the Children, finding that each of the Children preferred spending more time with Mother and “maintained a reticence to spend time with Father.” Father asserts that the court’s reliance upon the Children’s desires was inappropriate given the alleged alienation by Mother. Father further asserts that the Children’s “preferences were clearly biased.” The record reflects that the court’s findings with respect to the Children’s preferences were supported by the evidence. Furthermore, the circuit court considered this factor as one among many. Consideration of this factor, regardless of allegations of alienation, was appropriate.

With respect to the material opportunities affecting the future life of the Children, the circuit court considered that Father earns \$110,000.00 per year while Mother earns approximately \$25,000.00 per year. The court found that Father had the financial resources to provide the Children with additional material opportunities including enrollment in extracurricular activities. The court noted that although Mother does not have access to the same level of financial resources as Father, she has been “the engaged and encouraging presence in the Children’s lives.” Father asserts that this finding “is inconsistent in that it sets forth that the children will have greater material opportunities with [Father], but discounts this factor by stating that [Mother] has been more involved nonetheless.” We disagree that the court’s finding was inconsistent. The court considered the material opportunities, explained why the Children would have more material opportunities with Father, but articulated the reasons why this factor was not particularly compelling. In our view, the circuit court properly considered this factor.

Father raises no arguments with respect to the age, health, and sex of the Children factor. Father takes issue with the circuit court's finding relating to the residence of the parents and opportunity for visitation. The circuit court found that Mother "maintains a suitable residence in close distance to the Children's schooling . . . ." The court explained that it was unable to make a finding regarding Father's residence because Father had stated that he had to move to a new residence but provided no further details. Father asserts that the court failed to consider that Mother only had use and possession of the family home for one year and that her future housing situation was unknown. We disagree that the court acted improperly when considering the Mother's residence. The court was limited to considering the factors as they applied at the time, and, at the time, Mother resided in close proximity to the Children's schooling.

With respect to the length of separation from the natural parents, the circuit court found that the Children had remained primarily in Mother's care since the parties' separation. The court found that Father "had no significant time with the Children since the parties' separation in May 2013." The court noted that the Children had run away from Father on several occasions, requiring police intervention. Father concedes that this finding "may factually be correct" but asserts that Father's lack of significant time with the Children was caused by Mother's "calculated endeavor of estranging [Father's] relationship with the [C]hildren." As we explained *supra*, the circuit court was entitled to conclude that Mother did not intentionally estrange or alienate the Children from Father. The court, therefore, properly considered the length of separation from the natural parents.



Father does not challenge the circuit court's findings with respect to prior voluntary abandonment or surrender of custody. The circuit court found that Father had left the marital home on three separate occasions prior to the separation and that Father "voluntarily left the Children for multiple periods of time, leaving all care of the Children in the hands of Mother."

The circuit court considered the potential disruption of the Children's social and school lives, finding that because the Children have continuously resided with Mother in the Marital home, there would be no potential disruption if the Children remained in Mother's primary care. The court further found that there "would be little disruption . . . based on Father's residence as [the Children] would continue to reside in the same school district and remain in the area local to their activities." The court noted that Mother "has continuously demonstrated encouragement of the Children's school and extracurricular activities." The court found that the support from Mother would continue. The court found that "Father's involvement in the Children's school and extracurricular activities has been very limited." The court found credible Father's desire to be more involved, but noted that due to the parties' employment schedules, Mother had a better ability than Father to be present for and manage weekday activities. Father asserts that "[t]his factor does not weigh more heavily in one party's favor." The circuit court did not explain precisely how much it weighed this factor in its overall analysis, but the circuit court was entitled to give this factor whatever weight it believed it deserved.

The geographic proximity of parental homes factor does not appear to be a significant factor, given that the parties reside approximately two miles from one another

based upon Father's last residence. With respect to the demands of parental employment, the circuit court found that both Mother and Father are available to care for the Children on weekends but that Mother has more availability during the week. Father asserts that the court "failed to look into the future when [Mother] will be working full-time, which will impact her availability for the children." In our view, the circuit court properly considered this factor based upon the facts and circumstances at the time.

With respect to the financial status of the parents, the circuit court adopted the analysis set forth in the alimony discussion. The court found that Father earns a significantly greater income than Mother. The court found no impact on state or federal assistance.<sup>6</sup> The circuit court considered the benefit to parents, finding that "[b]oth parents have expressed a sincere desire and interest in being involved in the Children's lives."

The court considered additional factors when determining whether joint legal custody was appropriate. The circuit court considered the capacity of parents to communicate and to reach shared decisions affecting the Children's welfare, observing that the parties had minimal ability to communicate effectively and had been unable to reach shared decisions. Father asserts that the circuit court failed to "look deeper at the lack of communication to acknowledge that the inability to communicate was due to the refusal by [Mother]." The circuit court was entitled to draw all reasonable inferences based upon the evidence presented and give the evidence whatever weight the court believed it merited.

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<sup>6</sup> The circuit court noted that Mother receives a disability payment of \$480.00 per month, which would not be affected by having custody of the Children.

Accordingly, we reject Father's assertion that the circuit court failed to properly consider the causes behind the poor communication between the parties.

With respect to the parties' willingness to share custody, the circuit court commented that both parties, "but Mother in particular," exhibited reluctance to share custody. The court found that Mother did not assist Father when the Children ran away from Father during visitation and that Mother did not communicate with Father about the Children's medical appointments, school events, and extracurricular activities. The court explained that Father's "need for control over the Children has diminished his ability to cooperate with Mother in the care of the children." The court found that both parties had failed to demonstrate a willingness to share custody.

Father asserts that the court's findings with respect to Mother's lack of cooperation and communication with Father are contrary to the court's award of sole legal custody and primary physical custody to Mother. Again, Father attempts to relitigate the facts presented below. Father argues that his need for control "is much less harmful to the children" than Mother's refusal to cooperate. Which parent's conduct was more potentially harmful was a factual finding within the province of the circuit court. Evidence supporting the parties' conflicting narratives was presented to the circuit court and the circuit court was permitted to draw reasonable conclusions based upon the evidence presented.

With respect to the relationship between the Children and each parent, the circuit court found that the Children had "a close relationship with Mother and at best, a strained relationship with Father." The circuit court recounted evidence from multiple sources that "the Children are both angry with and fearful of Father." The circuit court discussed

Father's discipline methods, including physical discipline, in the context of the difficult relationship between Father and the Children. The court also recounted testimony about the difficult relationship between Mother and Father and Mother's allegations of violence by Father towards Mother. Father again asserts that the circuit court failed to properly consider Mother as a cause of the breakdown of the relationship between Father and the Children. As we have explained *supra*, the circuit court was entitled to consider the evidence presented and draw reasonable conclusions based upon the evidence. We will not second-guess the circuit court's conclusions as to the factors contributing to the Children's difficult relationship with Father. The final factor the circuit court considered was the sincerity of the parents' request. The court found that both parties were sincere in their requests for custody, and Father raises no arguments with respect to this factor.

Father asserts that the circuit court failed to give sufficient weight to the opinion and recommendations of custody evaluator Helen Laird, who testified that there was "severe alienation" in this case caused by Mother. Critically, a court is not required to credit the testimony of any witness, expert or otherwise. Furthermore, social worker Patricia Cummings testified that there was no universally accepted definition of parental alienation. The circuit court was also presented with significant evidence of other factors which the court could have reasonably concluded contributed to the deterioration of the relationship between Father and the Children, such as Father's discipline methods.

In this opinion, we cannot set forth every detail the circuit court heard during a merits trial that spanned fifteen days, nor is it the place of the appellate court to do so. In this case, the circuit court engaged in precisely the type of analysis we have explained is

appropriate when evaluating the best interests of a child in the context of a custody determination. The court carefully considered each factor and explained its reasoning in a comprehensive sixty-three page opinion. The circuit court's factual findings were supported by the evidence presented at trial. Furthermore, the circuit court's conclusions were based upon the appropriate factors. Accordingly, we reject Father's assertion that the circuit court erred and/or abused its discretion with respect to its custody determination.

## II.

Father's next contention is that the circuit court erred and abused its discretion by ordering Father to pay Mother indefinite alimony in the amount of \$1,000.00 per month. We perceive no such abuse of discretion.

An alimony award will not be disturbed on appeal unless the trial court abused its discretion. *See Sumpter v. Sumpter*, 436 Md. 74, 82 (2013). Questions that are left to the discretion of the trial court are "much better decided by the trial judges than by appellate courts," because the trial court has the opportunity to evaluate the credibility of witnesses and become immersed in the evidence as it was presented at trial. *Id.* For this reason, "[a]ppellate discipline mandates that, absent a clear abuse of discretion, a [trial court's] decision that is grounded in law and based upon facts that are not clearly erroneous will not be disturbed . . . ." *Guidash v. Tome*, 211 Md. App. 725, 736 (2013) (quoting *Bagley v. Bagley*, 98 Md. App. 18, 31–32 (1993)).

Critically, we will not reverse a trial court's ruling simply because we might not have reached the same result. *Gordon v. Gordon*, 174 Md. App. 583, 626 (2007) (quoting *Innerbichler v. Innerbichler*, 132 Md. App. 207, 230, *cert. denied*, 361 Md. 232 (2000)).

Put differently, only “where no reasonable person would take the view adopted by the [trial] court,” or “when the ruling is clearly against the logic and effect of facts and inferences before the court,” will we disturb the trial court’s ruling. *Reynolds v. Reynolds*, 216 Md. App. 205, 219 (2014) (internal quotations and citations omitted). When reviewing an award of indefinite alimony, we therefore accord great deference to the findings and judgments of the trial court. *Tracey v. Tracey*, 328 Md. 380, 385 (1992).

The award of alimony is governed by FL § 11-106. The purpose of alimony is to provide trial courts with the ability to ensure “an appropriate degree of spousal support . . . after the dissolution of a marriage.” *Tracey, supra*, 328 Md. at 388. It is well settled that the party seeking alimony bears the burden of proving the facts necessary to meet the statutory requirements. *Simonds v. Simonds*, 165 Md. App. 591, 607 (2005); *Thomasian v. Thomasian*, 79 Md. App. 188, 195 (1989). Section 11-106(b) of the Family Law Article (“FL”) sets forth the factors that the trial court must review when issuing an award of alimony. These factors include:

- (1) the ability of the party seeking alimony to be wholly or partly self-supporting;
- (2) the time necessary for the party seeking alimony to gain sufficient education or training to enable that party to find suitable employment;
- (3) the standard of living that the parties established during their marriage;
- (4) the duration of the marriage;
- (5) the contributions, monetary and nonmonetary, of each party to the well-being of the family;

- (6) the circumstances that contributed to the estrangement of the parties;
- (7) the age of each party;
- (8) the physical and mental condition of each party;
- (9) the ability of the party from whom alimony is sought to meet that party's needs while meeting the needs of the party seeking alimony;
- (10) any agreement between the parties;
- (11) the financial needs and financial resources of each party, including:
  - (i) all income and assets, including property that does not produce income;
  - (ii) any award made under §§ 8-205 and 8-208 of this article;
  - (iii) the nature and amount of the financial obligations of each party; and
  - (iv) the right of each party to receive retirement benefits; and
- (12) whether the award would cause a spouse who is a resident of a related institution as defined in § 19-301 of the Health-General Article and from whom alimony is sought to become eligible for medical assistance earlier than would otherwise occur.

FL § 11-106(b).

Although the court is required to give consideration to each of the factors contained in the statute as applicable to a given case, it is not required to employ a formal checklist, mention specifically each factor, or announce each and every reason for its ultimate decision. *Doser v. Doser*, 106 Md. App. 329, 356 (1995); *Hollander v. Hollander*, 89 Md.

App. 156, 176 (1991). We may examine the record as a whole to see if the court's findings were based on the mandated factors. *Doser, supra*, 106 Md. App. at 356.

A court may award alimony in one of two different forms. *Walter v. Walter*, 181 Md. App. 273, 281 (2008). The first type is alimony for a fixed period of time, also known as rehabilitative alimony. *Id.* The second is alimony for an indefinite period of time, also known as permanent alimony. *Id.* "When alimony is awarded, the law prefers that the award be for a fixed term." *Id.* Nevertheless, the court may use its discretion and award permanent alimony "in exceptional cases when one of the two circumstances described in subsection (c) of [Family Law Article] section 11-106 has been shown . . . ." *Id.* Family Law Article § 11-106(c) specifically provides:

The court may award alimony for an indefinite period, if the court finds that:

- (1) due to age, illness, infirmity, or disability, the party seeking alimony cannot reasonably be expected to make substantial progress toward becoming self supporting; or
- (2) even after the party seeking alimony will have made as much progress toward becoming self supporting as can reasonably be expected, the respective standards of living of the parties will be unconscionably disparate.

FL § 11-106(c).

The burden of satisfying the requirements of FL § 11-106(c) for an award of indefinite alimony rests on the party seeking it. *Turner v. Turner*, 147 Md. App. 350, 389 (2002). The trial court's determination of an unconscionable disparity sufficient to justify an order of indefinite alimony "requires the application of equitable considerations on a case-by-case basis, consistent with the trial court's broad discretion in determining an



appropriate award.” *Innerbichler, supra*, 132 Md. App. at 248 (quoting *Roginsky v. Blake-Roginsky*, 129 Md. App. 132, 146–47 (1999)). More specifically, a trial court’s finding that there will be an “unconscionable disparity in the parties’ standards of living usually begins with an examination of their respective earning capacities.” *Whittington v. Whittington*, 172 Md. App. 317, 338 (2007). The relevant point in time when the court compares the parties’ standards of living is “when the requesting spouse will have made maximum financial progress . . . .” *Id.*

If after projecting the parties’ future earning capacities, comparing the parties’ post-divorce standards of living, in addition to considering all other factors required by FL § 11-106(b), a trial court finds that the party seeking indefinite alimony cannot make substantial progress towards becoming self-supporting, the court may award indefinite alimony. *See Turner, supra*, 147 Md. App. at 389. The court’s finding that a party may become self-supporting in the future, however, does not necessarily bar an award of indefinite alimony. *Id.* In addition, “[a] trial court must evaluate and compare’ the parties’ respective post-divorce standards of living ‘as a separate step in making its judgment’ on a claim for indefinite alimony.” *St. Cyr v. St. Cyr*, 228 Md. App. 163, 189 (2016) (quoting *Tracey, supra*, 328 Md. at 393).

**A. The Trial Court Considered All Relevant Factors Required by § 11-106(b) in Making Its Alimony Determination.**

Before determining whether indefinite alimony is warranted pursuant to FL § 11-106(c), the trial court must first consider each relevant factor of the twelve factors listed under FL § 11-106(b), as the trial court did here. When evaluating Mother’s ability

“to be wholly or partly self-supporting,” the court considered the testimony of Father’s vocational expert, Lianne Friedman. Ms. Friedman testified that Mother could earn between \$40,000.00 and \$50,000.00 per year using her Human Relations (HR) degree. The court also considered Mother’s testimony that she had no hands-on training or experience in the field of HR, had not received further training in HR since she completed the degree in 1997, and that she had previously applied for a job in the HR field and was turned down due to her lack of experience. Based on these facts, the court concluded that “it is doubtful that [Mother] has the ability to gain full-time employment in [the HR] field without significant further training.” Finally, the court found that, in spite of Mother’s testimony that her current employer had no more hours available for her to work, she had the ability to obtain similar full-time employment.

Based on this evidence, the court attributed \$45,000.00 per year to Mother as an estimate of her maximum earning potential, including her disability payments, and found that Mother could be partly self-supporting. The court also found, based on this evidence and the fact that no evidence was presented regarding the kind of further training Mother could obtain to secure full-time employment HR, that Mother was not likely to obtain sufficient additional training to find suitable employment in the field. The court did note, however, that Mother required no additional training to work full-time in her current occupation.

The trial court went on to consider each of the remaining factures required by FL § 11-106(b), including a thorough analysis of Father’s ability to meet Mother’s needs and the incomes and expenses of each party. Similar to Father’s argument regarding custody

of the children, however, Father disputes the court's factual findings rather than whether the court's considered the appropriate factors. Although Father disputes the court's conclusions related to Mother's potential earning capacity, Father's argument on appeal is based in large part on the trial court's award of indefinite alimony.

**A. The Trial Court Did Not Abuse Its Discretion in Determining Mother's Earning Capacity or that the Parties' Standards of Living Would be Unconscionably Disparate.**

Father contends that the trial court abused its discretion when the trial court "ignored the evidence presented that [Mother] had in fact worked in the field of Human Relations" and found that Mother would likely need "significant further training" "to gain full-time employment in that field." Father argues that the trial court should have considered Mother's experience in supervisory or managing roles over other military personnel while in the Navy more than thirteen years earlier to be experience in the human relations field. Father points to the testimony of his expert, Lianne Friedman, who testified that Mother could eventually earn \$63,000.00 in the field of HR.

By the very nature of its discretion in determining alimony, the trial court is tasked with examining the facts on a case-by-case basis and evaluating the credibility of the witnesses. The court is not bound by Ms. Friedman's predictions of Mother's future earning capacity; instead, it is required to makes its own determination given all of the evidence presented. Based on the court's evaluation of all of the evidence and testimony, the court concluded that it was unlikely that mother would be able to obtain suitable employment within the field of HR. The court, therefore, did not assume Mother could

ever reach the median salary suggested by Father's vocational expert. It was within the court's discretion to make this determination.

In addition to Father's disagreement with the court's determination of Mother's earning capacity, Father contends that the trial court abused its discretion by finding that the parties' standards of living would be unconscionably disparate, and therefore satisfied the criteria for indefinite alimony. In doing so, however, Father misrepresents the evidence the court relied on in reaching this conclusion.

Father characterizes the trial court's comparison of the parties' monthly net incomes in the following manner:

The Second Amendment to Opinion[], sets forth that [Father's] net monthly income is \$2,872.68, while [Mother's] net monthly income is \$1,251.33. [] Based upon these findings, [the trial court] amended her prior award to the amount of \$1,000 per month, for an indefinite term. [The trial court] states that "the parties' income levels remain unconscionably disparate." [] Utilizing [the trial court's] figures for net income set forth above, [Mother's] income is 43.5% of [Father's] net income. These incomes alone are not unconscionably disparate to justify an award of indefinite alimony.

Father continues by arguing that previous Maryland cases in which awards of indefinite alimony have been upheld involved greater disparities between the parties' incomes. There are two problems with this characterization of the trial court's findings and conclusions. First, Father relies on income disparities in other indefinite alimony cases that are not comparable to those in this case. Second, Father misstates the court's projected disparity in the present case.

The comparisons Father offers as examples of “unconscionable disparities” in other cases compare the parties’ incomes differently than the court entertained in this case. In neither case did the income figures highlighted by Father represent the court’s informed projection into the future to predict the economically dependent party’s maximum earning capacity. Moreover, unlike in the present case, neither court in the proffered cases deducted reasonable expenses before comparing the parties’ incomes. Instead, for instance, the court in *Tracey* compared the parties’ annual incomes from a prior year and found that, although the economically dependent party had made as much progress toward becoming self-supporting as could reasonably be expected, she only made \$16,849. Her annual income therefore amounted to only 28 percent of the other party’s income of \$61,000. 328 Md. App. at 393.

In *Rock v. Rock*, the court speculated that “[e]ven if we assume she could make as much as \$30,000 per year, that would only be 21.7 percent of Mr. Rock’s 1988 income of \$138,546.69.” 86 Md. App. 598, 614 (1991). Based on these numbers, the trial court noted that consistent “with our prior decisions, this difference in income is substantial enough to uphold an award of indefinite spousal support.” *Id.* at 613. In the present case, however, the court arrived at an informed prediction of Mother’s future earning potential. The court then deducted reasonable monthly expenses from both parties’ projected income based on the evidence adduced at trial. It was based on the court’s comparison of these figures that the court determined the disparity between the parties’ post-divorce standards of living. In addition, had the court merely relied on the parties’ recent gross annual incomes - - Mother’s \$20,000 and Father’s \$110,000 - - Mother would earn only 18.2% of Father’s

income. More fatal to Father's analogies to these cases is the fact that utilizing the correct figures from the circuit court's conclusions yields an even greater disparity than the disparities between the parties in the cases relied upon by Father.

Secondly, Father greatly distorts the circuit court's comparison of the parties' net monthly incomes in the court's finding that Mother and Father's standards of living would be unconscionably disparate. Father claims that, "[u]tilizing [the court's] figures for net income," Mother's net monthly income is as much as 43.5% of Father's. In the trial court's second amendment to the opinion, however, the court clearly explained that, after accounting for Mother's monthly expenses, her net monthly income would be only \$251.33. After accounting for Father's monthly expenses and his taxes, his net monthly income would be \$3,872.68.<sup>7</sup> Based on the parties' projected net monthly incomes *before* the payment or receipt of alimony, Mother's income would be only about 6.5% of Father's income.

Father's contention that Mother's net monthly income after expenses is as high as 43.5 percent of Father's is based on the circuit court's prediction of the parties' incomes *after* the court deducted \$1,000.00 in alimony from Father's net monthly income and added \$1,000.00 in alimony to Mother's net monthly income. For the circuit court's purpose of determining whether the parties' standards of living will be unconscionably disparate and therefore warranting indefinite alimony, the only logical comparison of the parties' net

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<sup>7</sup> No evidence regarding Mother's taxes was presented to the court, and therefore, unlike Father's projected income, mother's payment of taxes was not taken into consideration.

monthly incomes is prior to factoring in the payment and receipt of alimony. Thus, Father's contention that Mother's net monthly income of \$1,251.33, compared to Father's \$2,872.68 net monthly income, is not unconscionably disparate merely supports the trial court's goal reaching a point at which the parties' post-divorce standards of living are less disparate.

Even apart from Father's mistaken characterizations of the trial court's conclusions, Father failed to show how the trial court abused its discretion. We will not disturb the trial court's decision to award alimony, whether rehabilitative or indefinite, when it is "grounded in law and based upon facts that are not clearly erroneous." *Guidash, supra*, 211 Md. at 736. The trial court's decision to award indefinite alimony in this case was based on the court's evaluation of evidence and testimony presented over fifteen days of trial, including evidence of Mother's future earning capacity. Critically, the trial court found that, at the court's projected maximum earning capacity of \$45,000 per year in her current occupation, Mother would earn only 28 percent of the parties' total income. The court compared this disparity to previous cases noting that "[t]he Court of Appeals has found that an unconscionable disparity exists when the recipient spouse of a similar age as Mother earned the same percentage of income, or more, of the parties' total income."<sup>8</sup> Further, the court found that, even after assuming Mother is capable of obtaining full-time employment in her current occupation earning as much as \$45,000 per year and becoming

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<sup>8</sup> The circuit court cited to two cases for this proposition: "[s]ee *Tracey v. Tracey*, 328 Md. 380, 393-94 (1992) (recipient spouse was 46 years old and earned 28% of the parties' income) . . . *Broseus v. Broseus*, 82 Md. App. 183, 196-97 (1990) (recipient spouse was 43 years old and earned 46% of the parties' income)."

partly self-supporting, the respective standards of living would remain unconscionably disparate. *See* FL § 11-106(c)(2).

The trial court did not abuse its discretion in awarding indefinite alimony. We, therefore, affirm the decision of the circuit court.

**JUDGMENT OF THE CIRCUIT COURT FOR  
ANNE ARUNDEL COUNTY AFFIRMED. COSTS  
TO BE PAID BY APPELLANT.**